United States Court of Appeals

for the Second Circuit

JOINT APPENDIX

76-7547

United States Court of Appeals
Second Circuit

B

Case No. [redacted]

NORTHEASTERN INDUSTRIAL PARK, INC. and
D.E. LONG, INC.,

Plaintiffs

NORTHEASTERN INDUSTRIAL PARK, INC.

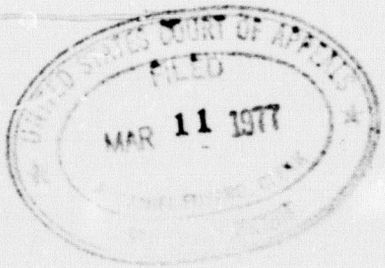
Plaintiff-Appellant-Cross-Appellee

vs

LOCAL 294, INTERNATIONAL BROTHERHOOD OF
TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND
HELPERS OF AMERICA,

Defendant-Appellee-Cross-Appellant

JOINT APPENDIX



FRANK J. WILLIAMS, JR.
Attorney for Plaintiff-Appellant
Office and P.O. Address
11 North Pearl Street
Albany, New York 12207
(518) 434-2127

POZEFSKY, TOCCI & POZEFSKY
Attorneys for Defendant-Appellee
112 State Street
Albany, New York 12207
(518) 436-0717

Printed by NATIONAL LEGAL SUPPLY, INC., Albany, N.Y. 12207

PAGINATION AS IN ORIGINAL COPY

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

NORTHEASTERN INDUSTRIAL PARK, INC.
and D. E. LONG, INC.,

Plaintiffs,

-against-

LOCAL 294, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA,

Defendant.

NOTICE OF APPEAL

73-CV-125

NOTICE IS HEREBY GIVEN that Northeastern Industrial Park, Inc., one of the plaintiffs in the above-entitled action, hereby appeals to the United States Court of Appeals for the Second Circuit from so much of the order and judgment dated September 30, 1976, and entered in this action on the same date as disallows the claim of the plaintiff Northeastern Industrial Park, Inc. for damages in the sum of $30,506.45.

Dated: October 15, 1976.

Frank J. Williams, Jr.
Attorney for Plaintiff-Appellant
Office and P.O. Address
11 North Pearl Street
Albany, New York 12207
518-434-2127

filed in U.S. Dist. Court Albany 10/14/76

DEFENDANT'S NOTICE OF CROSS-APPEAL

copy A2

U. S. DISTRICT COURT
N. D. OF N. Y.
FILED
OCT 29 1976
AT O'CLOCK M.
J. R. SCULLY, Clerk
ALBANY

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

NORTHEASTERN INDUSTRIAL PARK, INC. and D. E. LONG, INC.,

Plaintiffs,

-against-

LOCAL 294, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA,

Defendant.

NOTICE OF CROSS-APPEAL

Civil Action No. 73-CV-125

Notice is hereby given that Local 294, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, the defendant above-named, hereby cross-appeals to the United States Court of Appeals for the Second Circuit, from certain parts of the Final Judgment entered in this action on September 30, 1976, insofar as said judgment ordered and adjudged that judgment shall enter for compensatory damages in the amount of $5,154.00 in favor of plaintiff D. E. Long, Inc. and against Local 294, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America.

POZEFSKY, TOCCI & POZEFSKY
Attorneys for Defendant
Office & P.O. Address
112 State Street
Albany, New York 12207

POZEFSKY, TOCCI
& POZEFSKY
ATTORNEYS AT LAW
112 STATE STREET
ALBANY, N. Y. 12207

RECEIVED NOV 2 3 1976

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF NEW YORK

NORTHEASTERN INDUSTRIAL PARK, INC. and D. E. LONG, INC., Plaintiffs,	)	
-against-	)	No._____
LOCAL 294 INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, Defendant.	)	COMPLAINT

The plaintiffs complaining of the defendant allege:

AS AND FOR A SEPARATE, COMPLETE CAUSE OF ACTION ON BEHALF OF THE PLAINTIFF NORTHEASTERN INDUSTRIAL PARK, INC.

1. That the plaintiffs are corporations duly organized and existing under the laws of the State of New York.

2. That the plaintiffs bring this action pursuant to section 303 of the Labor-Management Relations Act of 1947 (29 USC §187) to recover damages for an illegal secondary boycott committed by the defendant and to recover the cost of this suit.

3. That jurisdiction is conferred on this Court by the provisions of said section 303 of the Labor-Management Relations Act of 1947 (29 USC §187), and by 28 USC §1331 relating to civil actions arising under the Constitution laws or treaties of the United States, and 28 USC §1337 relating to civil actions or proceedings arising under any act of Congress relating to commerce.

4. That at all times hereinafter mentioned the plaintiff Northeastern Industrial Park, Inc. was and is the owner and operator of an industrial park at Guilderland Center,

New York, known as Northeastern Industrial Park wherein it operates and leases commercial and industrial warehousing facilities and other commercial real estate facilities from which it annually receives gross revenue exceeding $2,000,000.

5. That at all times hereinafter mentioned the plaintiff D. E. Long, Inc. was and still is a tenant occupying premises at the aforesaid industrial park and was and still is engaged in freight hauling and annually receives gross revenues in excess of $50,000 from shipments made to points located outside of the State of New York.

6. That by reason of the foregoing the plaintiffs are and at all times hereinafter mentioned have been engaged in commerce and the activities of each affect commerce within the meaning of §2(6)(7) of the National Labor Relations Act [29 USC §152(6)(7)] and at all times hereinafter mentioned have so affected commerce.

7. That the defendant is and at all times hereinafter mentioned has been an unincorporated association and is a labor organization within the meaning of §2(5) of the National Labor Relations Act [29 USC §152(5)] and said defendant has its principal office and has officers and agents engaged in representing or acting for employee members in the County of Albany, State of New York, within the territorial jurisdiction of this Court.

8. That at all times hereinafter mentioned R & R Handling Centres, Inc. was a corporation occupying a portion of the aforesaid industrial park under a lease with the plaintiff Northeastern Industrial Park, Inc.

9. That at all times hereinafter mentioned various other business corporations also occupied portions of the said industrial park under leases with the plaintiff Northeastern Industrial Park, Inc.

10. That heretofore and on or about and during and between the dates March 22, 1971, and April 9, 1971, inclusively, a labor dispute existed between the defendant and the aforesaid R & R Handling Centres, Inc.

11. That during the said period between March 22, 1971, and April 9, 1971, inclusively, no labor dispute existed between the defendant and the plaintiff Northeastern Industrial Park, Inc.

12. That during the said period between March 22, 1971, and April 9, 1971, inclusively, no labor dispute existed between the defendant and the plaintiff D. E. Long, Inc.

13. That during the said period between March 22, 1971, and April 9, 1971, inclusively, no labor dispute existed between the defendant and any tenant or occupant of the said Northeastern Industrial Park other than the aforesaid R & R Handling Centres, Inc.

14. That during the aforesaid period between March 22, 1971, and April 9, 1971, inclusively, the defendant was not certified as a representative of the employees of the aforesaid R & R Handling Centres, Inc.

15. That in connection with the aforesaid labor dispute the defendant during the period from March 25, 1971, to and including April 9, 1971, picketed the premises of the said Northeastern Industrial Park by maintaining pickets at the main entrance, a railroad entrance and elsewhere.

16. That on March 26, 1971, the plaintiff Northeastern Industrial Park, Inc. established a reserved gate for the sole and exclusive use of the agents, servants, employees and invitees of the aforesaid R & R Handling Centres, Inc.

17. That during the course of such picketing the defendant through certain of its officers and agents made threats to the plaintiff Northeastern Industrial Park, Inc. to the effect that unless the defendant was allowed by the said plaintiff to picket around the premises of the said R & R Handling Centres, Inc. inside the industrial park the defendant would continue to picket the entire industrial park and would by its picketing "tie up the whole park."

18. That the object of the aforesaid acts of the defendant was to force or require the plaintiff Northeastern Industrial Park, Inc. and others to cease using, selling, handling, transporting or otherwise dealing in the products of, and to cease doing business with, R & R Handling Centres, Inc. and to force or require said R & R Handling Centres, Inc. to recognize and bargain with the defendant as representative of its employees all in violation of sections 8(b)(4)(i)(B) and 8(b)(4)(ii)(B) of the National Labor Relations Act [29 USC §§158(b)(4)(i)(B) and 158(b)(4)(ii)(B)].

19. That by reason of the aforesaid unlawful acts of the defendant the said plaintiff Northeastern Industrial Park, Inc. has been damaged in that its control and operation of the said industrial park has been disrupted and the said plaintiff has necessarily incurred substantial legal expense in defending itself and has otherwise been damaged all in the sum of $75,000.

AS AND FOR A SEPARATE AND COMPLETE CAUSE OF ACTION ON BEHALF OF THE PLAINTIFF D. E. LONG, INC.

20. Repeats, realleges and reasserts with the same force and effect as though herein at length fully set forth each and every allegation set forth in the paragraphs hereof numbered 1 through 17 inclusively.

21. That during the period from and including March 29, 1971, to and including April 9, 1971, the defendant picketed the plaintiff D. E. Long, Inc. at the main gate of Northeastern Industrial Park.

22. That on or about April 2, 1971, the defendant threatened the plaintiff D. E. Long, Inc. to the effect that unless certain officers and employees of the said plaintiff met with a certain officer or officers of the defendant the plaintiff's equipment would not move in and out of the industrial park.

23. That on or about April 5 and April 8, 1971, the defendant further threatened and coerced a certain employee of the plaintiff D. E. Long, Inc. and put said employee in fear of losing his membership in the defendant union thereby engaging in an inducement of such employee to refuse to perform services for the plaintiff D. E. Long, Inc.

24. That the object of the aforesaid acts of the defendant was to force or require the plaintiff D. E. Long, Inc. to cease using, selling, handling, transporting or otherwise dealing in the products of, and to cease doing business with R & R Handling Centres, Inc. and others, and to force or require said R & R Handling Centres, Inc. to recognize and bargain with the defendant as representative of its employees all in violation of sections 8(b)(4)(i)(B) and 8(b)(4)(ii)(B) of the National Labor Relations Act [29 USC §§158(b)(4)(i)(B) and 158(b)(4)(ii)(B)].

25. That by reason of the aforesaid unlawful acts of the defendant the said plaintiff D. E. Long, Inc. has been damaged in that it has been compelled to pay salaries and wages of officers and employees who were idled during the period of such picketing and was compelled to hold idle certain vehicles, machinery and equipment, and was compelled to and did incur other miscellaneous expenses during the period of such picketing all to the said plaintiff's damage in the sum of $25,000.

WHEREFORE, the plaintiffs demand judgment as follows:

A. For the plaintiff Northeastern Industrial Park, Inc. in the sum of $75,000;

B. For the plaintiff D. E. Long, Inc. in the sum of $25,000;

C. All together with the costs and disbursements of this action.

FRANK J. WILLIAMS, JR.
Attorney for Plaintiffs
Office and P.O. Address
11 North Pearl Street
Albany, New York 12207
518-434-2127

ANSWER

UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF NEW YORK

NORTHEASTERN INDUSTRIAL PARK, INC. and D. E. LONG, INC.,	)	
Plaintiffs,	)	Civil Action File No. 73-CV-125
-against-	)	ANSWER
LOCAL 294, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA,	)	
Defendant.	)	

NOW COMES the Defendant, Local 294, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, by its attorneys Pozefsky, Tocci & Pozefsky, and answers the Complaint herein as follows:

1. Admits the allegations set forth in paragraphs marked "1", "3", "4", "6", "7", "9", "10", "14", and "21".

2. Admits that the Plaintiffs' cause of action stated herein is brought under Section 303 of the Labor-Management Relations Act of 1947, but denies all the other allegations set forth in paragraph marked "2".

3. Denies the allegations set forth in paragraph marked "5", since D. E. Long, Inc. and Northeastern Industrial Park, Inc., the Plaintiffs herein, have the same ownership and are united in interest and not separate.

4. Defendant does not have knowledge sufficient to form a belief as to the allegations set forth in paragraph marked "8", and, therefore, denies them.

5. Denies the allegations set forth in paragraphs marked "11", "12", "13", "16", "17", "18", "19", "22", "23", "24", and "25".

6. Denies that picketing took place at all locations during the period March 25, 1971 to April 9, 1971, as alleged in paragraph "15", or that Northeastern Industrial Park, Inc. was the object of the picketing.

Pozefsky, Tocci
SHARRE POZEFSKY
ATTORNEY-AT-LAW
80 SOUTH MAIN STREET
GLOVERSVILLE, N. Y.

AS AND FOR A FIRST SEPARATE AND DISTINCT AND AFFIRMATIVE DEFENSE HEREIN, THE DEFENDANT ALLEGES

7. That any and all activities carried on by the Defendant herein, concerning Plaintiffs, and each of them, were activities that were fully protected and permitted under the Labor-Management Relations Act of 1947, as amended (29 USC Para. 187).

AS AND FOR A SECOND SEPARATE AND DISTINCT AND AFFIRMATIVE DEFENSE, HEREIN, THE DEFENDANT ALLEGES

8. The cause of action alleged in the Complaint herein was not commenced within the period provided by Law.

AS AND FOR A THIRD SEPARATE AND DISTINCT AND AFFIRMATIVE DEFENSE, TO THE CAUSE OF ACTION OF D. E. LONG, INC., HEREIN, THE DEFENDANT ALLEGES

9. That at all times set forth in the Complaint, Plaintiff D. E. Long, Inc. and the Defendant were parties to a labor agreement under which agreement the parties contracted that all controversies, grievances or contract disputes, including the Defendant's participation in an unauthorized work stoppage or walkout in violation of the no strike agreement contained in such labor agreement must be processed under the grievance procedure contained in said labor agreement prior to the institution of any damage action or law suit, as shown in Exhibit "A" hereto attached. (Article 8, Section 3 (b), Pages 39, 40, and 41 of the Labor Agreement)

10. The Plaintiff D. E. Long, Inc. has not instituted any grievance nor has it sought to present its demands for damages or other relief to the National Grievance Committee charged with the duty of hearing such demand as required by the said Labor Agreement Exhibit "A", Article 8, Section 3 (b) thereof.

11. The suit herein is not maintainable unless and until the provisions of the Labor Agreement concerning grievancesand disputes shall have first been processed.

Pozefsky, Bocci & Bocci
HARRY POZEFSKY
ATTORNEY-AT-LAW
20 SOUTH MAIN STREET
GLOVERSVILLE, N. Y.

ANSWER

12. The said remedies provided in the Labor Agreement are exclusive and are pre-emptive of the claim of D. E. Long asserted herein, unless and until the remedies and procedures of Article 8, Section 3 (b) shall have been first exhausted.

WHEREFORE, Defendant demands Judgment dismissing the Complaint herein together with the costs and disbursements of this action, and for such other and further relief as to this Court seem just in the premises.

Dated: April 27, 1973

POZEFSKY, TOCCI & POZEFSKY
Attorneys for Defendant, Local 294
International Brotherhood of
Teamsters, Chauffeurs, Warehousemen
and Helpers of America
OFFICE & P. O. ADDRESS
30 South Main Street
Gloversville, New York 12078
Tel. (518) 725-0609

Pozefsky, Tocci
& POZEFSKY
ATTORNEY-AT-LAW
30 SOUTH MAIN STREET
GLOVERSVILLE, N. Y.

not authorized by such organizations, without assuming liability therefor. It is understood and agreed that failure by the International Brotherhood of Teamster and/or the Area Conference to authorize a strike by a Local Union shall not relieve such Local Union of liability for a strike authorized by it and which is in violation of this Agreement.

(b) The question of whether the International Union, an Area Conference, or a Local Union, separately or jointly, participated in an unauthorized work stoppage, slowdown, walkout or cessation of work in violation of this Agreement by calling, encouraging, assisting or aiding in such stoppage, etc., in violation of this Agreement, or whether an Employer engaged in a lockout in violation of this Agreement, shall be submitted to the grievance procedure at the national level, prior to the institution of any damage suit action. When requested, the Co-Chairmen of the National Grievance Committee shall immediately appoint a subcommittee to develop a record by collecting evidence and hear testimony, if any, on the sole question of Union participation or Employer lockout in violation of this Agreement. The record shall be immediately forwarded to the National Grievance Committee for decision. If a decision is not rendered within thirty (30) days after the Co-Chairmen have convened the National Committee, the matter shall be considered deadlocked.

A majority decision of the National Grievance Committee on the question of Union participation or Employer lockout in violation of this Agreement shall be final and binding on all parties. If such majority decision is rendered in favor of one or more of the Union entities, or the Employer, in the case of lockout, no damage suit proceedings on the issues set forth in this Article shall be instituted against such Union entity or such Employer. If, however, the National Grievance Committee is deadlocked on the issues referred to in this subsection 3 (b), either party may institute damage suit proceedings, but the record of the National Grievance Committee and its Subcommittee shall not be offered in evidence by either party for any purpose. Except as provided in this subsection 3 (b), agreement to utilize this procedure shall not thereafter in any way limit or constitute a waiver of the right of the Employer or Union to commence damage suit action. However, the use of evidence in this procedure shall not waive the right of the Employer or Union to use such evidence in any litigation relating to the strike or lockout, etc. in violation of this Agreement. There shall not be any strike, slowdown, walkout, cessation of work or lockout as a result of a deadlock of the National Grievance Committee on the questions referred to under this subsection 3 (b), and any such activity shall be considered a violation of this Agreement.

Nothing herein shall prevent the Employer or Union from securing remedies granted by law except as specifically set forth in this subsection 3 (b).

— 39 — — 40 — — 41 —

EXHIBIT "A"

UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF NEW YORK

NORTHEASTERN INDUSTRIAL PARK, INC. and D. E. LONG, INC., Plaintiffs, -against- LOCAL 294, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, Defendant.	)	Civil Action File No. 73-CV-125 MOTION

Upon the annexed affidavit of Frank J. Williams, Jr., sworn to June 5, 1975, and upon all prior pleadings and proceedings, the plaintiffs will move this Court as follows:

1. For summary judgment in favor of the plaintiff, Northeastern Industrial Park, Inc., under Rule 56(c) of the Federal Rules of Civil Procedure on the issue of liability alone on the ground that such issue is res judicata.

2. For summary judgment in favor of the plaintiff, D. E. Long, Inc., under Rule 56(c) of the Federal Rules of Civil Procedure on the issue of liability alone on the ground that such issue is res judicata.

3. Alternatively, for an order under Rule 56(d) of the Federal Rules of Civil Procedure specifying the facts that appear without substantial controversy and directing such further proceedings in the action as are just.

4. For such other and further relief under Rule 16 of the Federal Rules of Civil Procedure as may be just and proper.

Dated: June 5, 1975.

Frank J. Williams, Jr.
Attorney for Plaintiffs

TO: POZEFSKY, TOCCI & POZEFSKY
Attorneys for Defendant
112 State Street
Albany, N.Y. 12207

FRANK J. WILLIAMS, JR.
Attorney for Plaintiffs
Office and P.O. Address
11 North Pearl Street
Albany, N.Y. 12207
518-434-2127

UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF NEW YORK

NORTHEASTERN INDUSTRIAL PARK, INC. and D. E. LONG, INC., Plaintiffs, -against- LOCAL 294, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, Defendant.	)	Civil Action File No. 73-CV-125 AFFIDAVIT

STATE OF NEW YORK)
) ss.:
COUNTY OF ALBANY)

FRANK J. WILLIAMS, JR., being duly sworn, deposes and says:

I am the attorney for the plaintiffs and as such have knowledge of the facts hereinafter set forth.

This is an action to recover damages suffered by the plaintiffs by reason of unlawful picketing by the defendant alleged to have occurred between March 25, 1971, and April 9, 1971. The action was commenced by the filing of the complaint in the office of the clerk of this Court on March 22, 1973. Issue was joined by the service of an answer by the defendant on April 30, 1973.

The issues raised by the complaint in this action with the exception of the issue of damages were tried and determined in a proceeding before the National Labor Relations Board tried on June 23 and June 24, 1971, under the title "Local 294, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America and Northeastern Industrial Park, Inc." designated as Case No. 3-CC-605. Attached hereto and made a part of this affidavit and marked Exhibit A is a true and complete copy of the charge in said proceeding dated and filed March 26, 1971. Attached hereto and made a part of this affidavit and marked Exhibit B is a true and complete copy of the order entered in said proceeding consolidating said Case No. 3-CC-605 with Case No. 3-CC-606, and consolidated complaint containing seven pages together with original notice of hearing, all dated April 21, 1971. Attached hereto and made a part of

this affidavit and marked Exhibit C is a true and complete copy of the decision and order of the National Labor Relations Board made in the said proceeding consisting of three pages and dated April 14, 1972. Attached hereto and made a part of this affidavit and marked Exhibit D is a true and complete copy of the trial examiner's decision made in the said proceeding consisting of 32 pages dated November 1, 1971. Incorporated herein by reference is the transcript of the testimony taken and the proceedings had in said matter before the aforementioned trial examiner, the proceedings of June 23, 1971, being recorded in pages 1 through 194 of the said transcript and the proceedings of June 24, 1971, being recorded in pages 195 through 295 of the said transcript.

Frank J. Williams, Jr.

Sworn to before me this
5th day of June, 1975.

Notary Public

196 NLRB No. 48

D--6137
Guilderland Center,
N.Y.

UNITED STATES OF AMERICA

BEFORE THE NATIONAL LABOR RELATIONS BOARD

LOCAL 294, INTERNATIONAL BROTHERHOOD
OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN
AND HELPERS OF AMERICA

and Case 3--CC--605

NORTHEASTERN INDUSTRIAL PARK, INC.

LOCAL 294, INTERNATIONAL BROTHERHOOD
OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN
AND HELPERS OF AMERICA

and Case 3--CC--606

ROTTERDAM VENTURES, INC.

DECISION AND ORDER

On November 1, 1971, Trial Examiner Harry H. Kuskin issued the attached Decision in this proceeding. Thereafter, Respondent filed exceptions and a supporting brief, and Charging Parties filed limited cross-exceptions and a brief in support of the Trial Examiner's Decision, in answer to Respondent's exceptions, and in support of their limited cross-exceptions.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the record and the Trial Examiner's Decision in light of the exceptions and briefs and has decided

EXHIBIT C

APR 17 1972

3-14

appendix filed
3-11-77

76-7547

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Frank J. Williams, Jr.
Attorney at Law
11 North Pearl Street
Albany, New York 12207

Telephone 434-2127
Area Code 518

March 11, 1977

United States Court of Appeals
Second Circuit
United States Courthouse
Foley Square
New York, New York 10007

Re: Northeastern Industrial Park, Inc.
v. Local 294, International Brotherhood
of Teamsters, etc. - Docket No. 76-7547

Gentlemen:

Enclosed herewith please find ten (10) copies of Joint Appendix page A17 which was inadvertently omitted by the printer. Kindly insert the same.

Very truly yours,

Frank J. Williams, Jr.

FJW/ccb
Enc.

cc-Pozefsky, Tocci & Pozefsky

to affirm the Trial Examiner's rulings, findings, and conclusions[1/] and to adopt his recommended Order as modified herein.[2/]

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Trial Examiner as herein modified and hereby orders that Local 294, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Guilderland Center, New York, shall take the action set forth in the Trial Examiner's recommended Order as modified below:

1/ In affirming the Trial Examiner's conclusions, Members Fanning and Jenkins do not rely on Building and Construction Trades Council of New Orleans, AFL--CIO (Markwell and Hartz), 155 NLRB 319, from which they dissented. In their opinion, this case presents a factual situation entirely different from that in Markwell and Hartz and to which the principles set forth in their dissent do not apply.

2/ The Charging Parties except to the Trial Examiner's failure to provide in his recommended Order that Respondent be specifically ordered, among other things, to (1) send a copy of the recommended notice (TXD Appendix) by certified mail, return receipt requested, to every Respondent member, and submit a list of Respondent's membership and the return receipts on these mailings to the Regional Director; and (2) send a copy of the recommended notice by certified mail, return receipt requested, to each employer and employer association with whom Respondent has any collective-bargaining agreement, and submit a list of such employers and employer associations and the return receipts on these mailings to the Regional Director. In his Decision, the Trial Examiner has recommended that the Respondent be broadly enjoined from engaging in any more such boycotts. As requiring such an order, he has referred to prior cases involving this Respondent and has discussed the Respondent's proclivity to violate the Act as demonstrated by those cases. For the same reasons, we find merit in the exceptions as to the above-stated additional affirmative action and shall appropriately modify the recommended Order.

Insert the following as paragraphs 2(c) and 2(d) and renumber the subsequent paragraph accordingly:

"(c) Send a copy of the recommended notice (TXD Appendix) by certified mail, return receipt requested, to every Respondent member, and submit a list of Respondent's membership and the return receipts on these mailings to the Regional Director.

"(d) Send a copy of the recommended notice by certified mail, return receipt requested, to each employer and employer association with whom Respondent has any collective-bargaining agreement, and submit a list of such employers and employer associations and the return receipts on these mailings to the Regional Director."

Dated, Washington, D.C. APR 14 1972

John H. Fanning, Member

Howard Jenkins, Jr., Member

Ralph E. Kennedy, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

TXD-606-71
Guilderland Center, N.Y.

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF TRIAL EXAMINERS
WASHINGTON, D.C.

LOCAL 294, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA

and Case No. 3-CC-605

NORTHEASTERN INDUSTRIAL PARK, INC.

LOCAL 294, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA

and Case No. 3-CC-606

ROTTERDAM VENTURES, INC.

Thomas J. Sheridan, Esq.
for the General Counsel.
Harry Pozefsky, Esq., of
Pozefsky & Tocci, for
Respondent.
Frank Williams, Esq., for
Northeastern Industrial
Park, Inc., one of the
charging parties.
Robert H. Jones, III, Esq.
for Northeastern Industrial
Park, Inc., and Rotterdam
Ventures, Inc., the two
charging parties.

TRIAL EXAMINER'S DECISION

Statement of the Case

HARRY H. KUSKIN, Trial Examiner: This proceeding was heard at Albany, New York, on June 23 and 24, 1971. A consolidated complaint in Cases Nos. 3-CC-605 and 3-CC-606 issued on April 21, 1971, based on an original charge in each case filed on March 26 and April 1, 1971, respectively, against Local 294, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, herein called Respondent. The consolidated complaint alleges that Respondent has, in furtherance of its labor dispute with R & R Handling Centres, Inc., herein called R & R, violated Section 8(b)(4)(i) and (ii)(B) of the Act by certain described conduct, namely, (1) on or about March 25, 1971, it threatened Northeastern Industrial Park, Inc., herein called Northeastern (the lessor of Northeastern Industrial Park, which is tenanted inter alios by R & R as well as by D.E. Long Rigging and Hauling Inc., herein called Long; M & G Convoy, Inc., herein called M & G; Starrett-Modular Construction, division of Starrett & Eken, Inc., herein called Starrett; Two Guys from Harrison, Inc., herein called Two Guys; J.J. Newberry Co. Inc., herein called Newberry; and Distribution Unlimited Inc., herein called Distribution), that it would picket everyone in Northeastern Industrial Park and tie up everyone in the Park; (2) it threatened Long in the same manner on or about the same date; (3) since on or about March 26, 1971, it picketed Northeastern, Long, M & G, Starrett, Two Guys, Newberry, Distribution and other tenant-employers other than R & R at the Northeastern Industrial Park main gate, even though this gate was established as the separate entrance to the Park for tenant-employers other than R & R; (4) since on or about March 29, 1971, it picketed M & G and Distribution at a railroad gate used only by Delaware and Hudson Railway, herein called D & H; (5) from on or about March 31, 1971, to on or about April 2, 1971, it picketed Rotterdam Ventures, Inc., herein called Rotterdam, and Distribution and other tenant-employers of Rotterdam Industrial Park, Rotterdam being the owner and operator of Rotterdam Industrial Park; and (6) on or about April 5, 1971, and on or about April 8, 1971, it threatened a supervisor employed by Long with union discipline for working during Respondent's picketing at Northeastern Industrial Park -- all of the foregoing conduct being unlawful in that it induced and encouraged individuals employed by

all the aforesaid employers other than R & R, and individuals employed by other persons engaged in commerce or in industries affecting commerce, to engage in strikes or refusals in the course of their employment to transport or otherwise handle goods, articles or commodities or to perform services, and in that, in addition, it threatened, coerced and restrained the aforesaid employers other than R & R, with the objects of (a) forcing or requiring Northeastern, Long, M & G, Starrett, Two Guys, Newberry, D & H, Rotterdam, Distribution and other persons to cease using, selling, handling, transporting or otherwise dealing in the products of, and to cease doing business, with R & R, and (b) to force or require R & R to recognize and bargain with Respondent as the representatives of R & R's warehouse employees, although Respondent has not been certified as representative of such employees under the Act. In its answer, Respondent denies that it has engaged in any of the unfair labor practices alleged herein.

Upon the entire record, including my observation of the witnesses, including their demeanor while on the witness stand, and after due consideration of the briefs of the General Counsel, Respondent, and the Charging Parties filed herein, I make the following:

Findings of Fact

I. The Businesses of Northeastern, Long, M & G, R & R, Starrett, D & H, Two Guys, Newberry, Rotterdam and Distribution

The consolidated complaint alleges, and Respondent admits, all of the following:

(a) Northeastern, a New York corporation, with its principal office and place of business at Northeastern Industrial Park in Guilderland Center, New York, is engaged in the business of owning and operating commercial and industrial real estate, and annually receives from these operations a gross revenue exceeding $2,000,000.

(b) Long, a New York corporation, is engaged in freight hauling and annually receives gross revenues in excess of $50,000 from shipments made to points located directly outside New York State.

(c) M & G, a Delaware corporation with its principal office in Buffalo, New York, is engaged in the business of transportation of automobiles, and annually receives gross revenues in excess of $50,000 from shipments made to points located directly outside New York State.

(d) R & R, a New York corporation, with its principal office and place of business located at Northeastern Industrial Park, is engaged in public warehousing, and annually performs in excess of $50,000 worth of services for other enterprises located in New York State, which other enterprises ship annually in excess of $50,000 worth of goods and materials directly outside New York State.

(e) Starrett, a New York corporation with its principal office and place of business in New York City, is engaged in the prefabrication of modular apartments, and annually receives goods and materials worth in excess of $50,000 directly from outside New York State.

(f) D & H, a Delaware corporation, operates rail service in the States of New York, Pennsylvania and Vermont.

(g) Two Guys, a New York corporation, is engaged in retail merchandising and operates stores in New York State, at which stores goods and materials worth in excess of $50,000 are received annually directly from outside New York State and the annual gross revenues exceed $500,000.

(h) Newberry, a Delaware corporation with its principal office and place of business in New York City, is a multistate enterprise and operates several stores in the United States; its annual gross volume of business exceeds $500,000 and it annually ships goods and materials worth in excess of $50,000 directly outside New York State.

(i) Rotterdam, a New York corporation with its principal place of business at Rotterdam, New York, is engaged in the business of owning and operating commercial and industrial real estate, including Rotterdam Industrial Park, and annually receives from these operations a gross revenue of $1,000,000.

(j) Distribution, a New York corporation, is engaged in public warehousing with its principal places of business at Rotterdam Industrial Park and Northeastern

Industrial Park; it annually performs services worth more than $50,000 for other enterprises located in New York State, which other enterprises annually ship directly outside New York State goods and materials worth more than $50,000.

I find, upon the foregoing, as Respondent also admits, that Northeastern, Long, M & G, R & R, Starrett, D & H, Two Guys, Newberry, Rotterdam and Distribution are each employers and persons engaged in commerce and in an industry affecting commerce within the meaning of the Act.

II. The Labor Organization Involved

Respondent further admits, and I find, that Local 294, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, is a labor organization within the meaning of the Act.

III. The Unfair Labor Practices

1. Some details concerning Northeastern Industrial Park and Rotterdam Industrial Park 1/

Northeastern Industrial Park is a large private commercial storage site in Guilderland Center, New York, which was acquired by Northeastern in 1969 under a 99 year lease with an option to renew for another 100 years. The park covers an area of about 500 acres and is enclosed by a 9 or 10 foot chain-link fence; it is bounded on the west by County Highway 201 and on the east by railroad tracks. A detailed drawing of the park, in evidence as General Counsel's Exhibit 2, shows eight or nine gates at various points along the fence. Of these gates, only gates 1 and 9, which are located along the west side of the park and are bounded by County Highway 201, 2/ are truck entry gates and are the only gates large enough to allow such traffic. The other gates are not all active gates; one that is active is a small gate that goes to a residence. Inside

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1/ Unless otherwise indicated herein, the facts found herein are uncontradicted.

2/ Gate No. 9 is about 1½ miles farther down the highway from Gate No. 1.

the park is a number of buildings which have been leased by Northeastern to various tenants. Among these tenants are R & R, Long, D & H, Newberry, Two Guys, Starrett, M & G, Distribution and the State of New York. 3/ With respect to Long and Distribution, the record shows that they have common ownership with Northeastern. And as to R & R, it shows that it ceased to be a tenant in May 1971, as the result of eviction proceedings instituted by Northeastern which culminated in a stipulation for the surrender of the premises by R & R.

Rotterdam, which also has common ownership with Northeastern, Long and Distribution, owns and operates Rotterdam Industrial Park and, like Northeastern Industrial Park, it is a commercial and industrial storage site. It is located about 6 or 7 miles from the latter park. The entrance to Rotterdam Industrial Park by truck is only through the Duanesburg gate, off of route 7. Here, too, the storage area is leased to various tenants. Among them are General Electric Company, Goodyear Tire and Rubber Company, the State of New York, the State of New York Education Department, and Distribution.

2. Some background facts

This proceeding had its genesis in a labor dispute between Respondent and R & R. The record shows that on or about March 22, 1971, 4/ Respondent made a demand upon R & R for recognition as the exclusive bargaining agent of its warehousing employees, that the demand was refused, and that Respondent established picket lines on March 25, around the building in Northeastern Industrial Park occupied by R & R. The picket signs carried the legend "Teamster Local 294 on strike against R & R Handling, for improved wages and conditions," and picket duty was done by R & R employees on strike, of whom there were about 15. The picketing at this location, however, was short-lived as a result of the intercession of Herbert Grimshaw, the vice president of Northeastern. This intercession was triggered

3/ The State of New York uses the leased premises as a storage facility.

4/ All dates hereinafter are in 1971.

by Edson Canham, the general supervisor of R & R, who alerted Anthony Delorenzo, the general sales manager of Northeastern, at about 7:45 a.m. on March 25, to the presence of the pickets and to his concern over having any trouble; Delorenzo, in turn, alerted Grimshaw. Grimshaw, after speaking to Canham, himself, went to the area of the picket line and spoke to Anthony Spacioso and Charles Bentley. 5/ According to the credible testimony of Grimshaw, the following then occurred: Spacioso told him that Respondent had a labor dispute with R & R and had initiated picketing that morning. He, in turn, told Spacioso that this was private property and "/he/ wasn't sure that /he/ could permit them to continue to remain in the park. . . that /he/ wasn't sure what /Northeastern's/ legal and insurance responsibilities were under this situation." At about this time, Robert Degussman, the president and local operating official for R & R, arrived on the scene, and spoke with him out of earshot of Spacioso and the others. Following this, he again approached them and told them that he had been asked by Degussman, speaking for R & R, to remove the pickets from the property, and that since R & R had a leasehold interest in the area around the buildings occupied by it, he would have to comply. He added that he would show them where the R & R reserved gate was 6/ and would even go to that gate and help them set up their pickets at that location. At this juncture, according to the uncontradicted testimony of Grimshaw, he asked whether Respondent had any dispute with any other tenants in the Park, mentioning by name, inter alia, D & H, Long, Two Guys, and Newberry and he was assured that Respondent's sole dispute was with R & R. 7/ He then showed the way to Gate No. 9, and Spacioso and Bentley, together with the pickets, obligingly went along. 8/

5/ Both Spacioso and Bentley are, I find, business agents of Respondent. Spacioso did not testify in this proceeding, whereas Bentley did. Bentley acknowledged that he was present at the time.

6/ Gate No. 9 had been set up as a reserved gate on March 23 or 24 by Northeastern at the request of management at R & R.

7/ To the extent that Bentley did testify concerning this episode, he corroborated the testimony of Grimshaw.

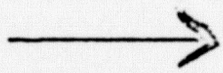
8/ As appears hereinafter, Respondent subsequently sought, without success, to get permission from Northeastern to picket R & R again around the building occupied by R & R inside the compound. However, since the picketing that occurred after the pickets left the compound (Continued)

Already posted on Gate No. 9 was a sign with the following legend:

R & R HANDLING CENTRES
EMPLOYEES & CUSTOMERS
ENTRANCE ONLY (underscoring in text)

The record shows that, at about the same time as this sign was placed in position, Northeastern had placed another sign on the fence in front of the guardhouse at Gate No. 1, with a legend and an arrow thereon, the latter pointing in the direction along which one would proceed from Gate No. 1 via the highway adjacent to the fence-enclosed park, in order to reach Gate No. 9. The legend and arrow were as follows:

R AND R
EMPLOYEES ENTRANCE



From this time until R & R went out of business sometime early in May 1971, Respondent conducted picketing at Gate No. 9. The pickets carried the same signs as they had carried while picketing R & R inside the compound.

3. The critical events and the alleged secondary boycott activity

Within about an hour after the commencement of the picketing at Gate No. 9 on March 25, Respondent initiated picketing at Gate No. 1 with the same signs. This was noticed by Grimshaw from his office at about 9:30 a.m. Whereupon, Grimshaw went to the main gate by car, accompanied by Delorenzo. There, he saw Spacioso, as well as a number of pickets carrying the aforesaid signs. According to a composite of the credible testimony of both Grimshaw and Delorenzo,

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8/ (Continued) took place outside Northeastern Park, and since that picketing constitutes the only picketing at that park alleged herein to contravene the Act, I need not, and do not, indulge in the academic exercise, impliedly urged by Respondent in its brief, as to what were Respondent's rights under the Act to picket R & R inside the compound. Further, I find that the prior picketing inside the compound by Respondent and the abortive attempts during the period of such outside picketing to get permission from Northeastern to picket R & R inside the compound are not available to Respondent as mitigating circumstances with respect to the violations alleged herein.

Grimshaw reminded Spacioso of his prior agreement to picket at Gate No. 9, and told him that the instant picketing at Gate No. 1 was interfering with interstate trucking, to which Spacioso replied that Grimshaw should communicate with Nick Robelotto, the president of the Union, as to this matter. As already noted, Spacioso did not testify in this proceeding. I credit Grimshaw in this respect.

Thereafter, at noon on March 25, a meeting was held in Grimshaw's office at the request of Bentley and Spacioso. Delorenzo was also present. Bentley then indicated that Respondent would like to enter the park in order to picket R & R on their grounds. Grimshaw explained, as he had once before that morning, why he had no recourse except to ask Respondent's pickets to stay outside the park. It is Grimshaw's testimony that Bentley then replied that, "if they couldn't picket R & R on their grounds, they would have to picket the whole park." At this juncture, also according to Grimshaw, the following occurred: Bentley suggested that he, Grimshaw, call Robelotto on the telephone. He obliged and reached an individual who identified himself as Robelotto and whose voice was recognized by Bentley, as it came over the speaker phone in Grimshaw's office, as that of Robelotto. In the conversation that ensued, Grimshaw repeated what he had previously told Spacioso and Bentley, in explaining why Respondent could not be allowed to picket R & R on R & R's grounds; and Robelotto's response was similar to that of Bentley, i.e., "that if he couldn't get into the park with the pickets, he would have to picket the whole park." The conversation concluded at this point because Robelotto said that he did not want to discuss the matter any more over the telephone. Grimshaw's version of this episode was corroborated in all material respects by Delorenzo, except that Delorenzo had both Bentley and Robelotto using the words "tie up the whole park" instead of "picket the whole park." With respect to the above, Bentley neither admitted nor denied Grimshaw's and Delorenzo's attribution to him about picketing the whole park if Respondent was not allowed to picket R & R inside the park, but he expressly denied their attribution to Robelotto to substantially the same effect. According to Bentley, Robelotto said, in this connection, "Because you say that you will allow no truck traffic through the main gate . . . you say that, but we have no way of verifying it . . . no way for us to police it . . . until you allow us to picket where we should, we will have to keep picketing the main gate." In all these circumstances, and as Grimshaw's

attribution to Bentley stands undenied by Bentley on this record, I conclude, and find, that Bentley threatened to picket the whole park if Northeastern did not allow Respondent to picket R & R around its premises inside the park, thereby implying that it would, by its picketing, tie up Northeastern's operations at the park. And I find further that, even accepting Bentley's testimony that Robelotto said only that, in such event, he would continue picketing at the main gate, it follows from the fact that the only place of access and egress for truck traffic serving the tenants of the park other than R & R was through the main gate that this remark was tantamount to a threat to tie up the whole park by its picketing, and I so find.

There is further testimony by Bentley that during this visit to Grimshaw's office, Grimshaw asked him why Respondent did not picket only at the reserved gate set up for publicizing its dispute with R & R, and that he replied that he did not think the signs at the main gate were proper, that the sign with the arrow, described above, pointed out into the field, and that none of the signs at the gate was visible from the road because of parked cars obstructing the view, and, further, that the signs did not indicate that the R & R reserved gate was down the road. In this connection, Grimshaw acknowledged that a question was raised as to whether the sign at the main gate could be misinterpreted, but he could not recall whether it was raised by a representative of Respondent or by Northeastern. Nor did he indicate where the question was raised. In all these circumstances, I conclude, and find, that Bentley testified credibly in this respect.

By about 7 a.m., on Friday, March 26, Northeastern had posted outside the fence, at the point where the fence encloses the guardhouse situated at Gate No. 1, a sign with the following legend:

GATE ONLY
FOR

MOHAWK RUBBER CO.
N.Y. STATE-G. FULLER CO.
STARRET-MODULAR CORP.
VORNADO-TWO GUYS
LEEDS FOX
J.J. NEWBERRY'S
M & G CONVOY
DISTRIBUTION UNLIMITED
PARK SAW MILL
GALESI-McKENNA REALTY CORP.
D.E. LONG

At about the same time, Northeastern also had posted outside the fence and about 75 or 100 feet from Gate No. 9, a second sign having the following legend:

ALL OTHER TENANTS
EMPLOYEES CUSTOMERS
USE MAIN GATE

Also, at about 2 o'clock that day, the sign posted on the fence in front of the guardhouse at the main gate relating to R & R was moved to the right of the main gate entrance and exit lanes, and was so placed that the arrow thereon pointed in the general direction of the R & R reserved gate.

Although Bentley testified, at first, under cross examination, that this sign, after it was moved, pointed to a vacant lot rather than to the reserved gate, he later conceded, when pressed by counsel for the General Counsel, that it did point toward the road which eventually leads to the reserved gate. I am satisfied from all the foregoing that while there was initially some confusion as to the signs intended to establish Gate No. 9 as the reserved gate, such confusion was eliminated by the addition of the sign at Gate No. 1, and the sign at Gate No. 9, and by changing the position of the R & R sign with the arrow. This is so because the designation of the gates and the posting of the signs by Northeastern then afforded the clarity necessary to provide reasonable assurance to Respondent that, by confining its picketing to R & R at Gate No. 9, its message would be carried to all within the legitimate direct appeal of its picket signs.

Respondent picketed both the main gate and the reserved gate on March 26. At the main gate it used R & R employees again as pickets and used the same picket signs as the day before. When Grimshaw arrived at the main gate at about 8 o'clock that morning, Spacioso and the pickets were there. In addition, about 25 or 30 cars and trucks and a number of car carriers were parked on both sides of the road in the vicinity of the gate, allowing for only a single lane of traffic along the adjoining highway. At this, Grimshaw approached Spacioso and accused him of "imposing a secondary boycott," and Spacioso answered, "don't talk to me, talk to Nick /Robelotto/." Thereafter, he spoke to about seven drivers who were gathered around the guardhouse and each of them told him of the hour of arrival with his vehicle that morning, and of the fact that he, the driver, was then told

by the pickets that he must not cross the picket line. The record shows that among the vehicles parked along the road outside the gate were vehicles going to tenants in the park, i.e., M & G, Two Guys, and Newberry. And so far as appears, only the M & G car carriers, which were parked out there, managed to enter the park that day.

During most of Monday, March 29, Respondent also picketed in front of the main gate with the same picket signs naming R & R as the company with which it had a primary dispute. However, around 4 p.m., or so, Respondent's picketers began to carry signs naming Long as the company with which it had a primary dispute. 9/ The legend on these signs read as follows:

OFFICE AND CLERICAL WORKERS OF
D.E. LONG
DO NOT RECEIVE THE
BENEFITS AND PROTECTION OF
A TEAMSTERS LOCAL 294
CONTRACT

And so far as appears, among those picketing were employees of R & R who were then on strike. 10/ And it further appears that the signs at the main gate remained the same until the picketing was enjoined by Court order, as appears hereinafter, on April 9.

It is also apparent, and I find, that, because of the picketing, truck traffic ceased through the main gate and each of the tenants in the park suffered substantial loss of revenue and loss of business since its normal activities were interfered with. In the case of Long, the drivers, riggers and platform workers, who are members of Respondent, did not come to work. And with respect to Northeastern, it lost revenue, inter alia, because existing negotiations with tenants of the park for additional space fell through, due to the situation created by the picketing.

9/ According to Bentley, he received instructions from Respondent that Monday morning or late the prior Friday afternoon to remove the R & R pickets at the main gate. Whereupon, he moved the pickets to the reserved gate and the railroad gate.

10/ According to Canham's estimate there were about 14 R & R employees on strike and there were about 25 individuals who formed the corps of picketers utilized by Respondent.

On Wednesday, March 31, at about 2 p.m, pickets carrying the above-described Long signs also appeared at the Duanesburg Road gate, the only truck gate at Rotterdam Park. Neither Long nor R & R was then, and so far as appears R & R has never been, a tenant occupying space in Rotterdam Park, although some tenants of Northeastern Park, including Distribution Unlimited, were then also tenants of Rotterdam Park. In the case of Long, however, it had, a few days before that, stored at Rotterdam Park two tractors, which it had leased, and a piece of art work which it was handling for the State of New York, the reason therefor being that the tractors and the piece of art could not be brought into Northeastern Park because of the picketing being conducted there. Long had no employees stationed there. Indeed, Long had leased these tractors because it was unable to get its own tractors out of Northeastern Industrial Park in order to use them. Here, too, employees who were then on strike against R & R were among those picketing at Rotterdam Industrial Park. And here, too, motor vehicles such as trucks and car carriers refrained from entering the park to deliver goods to tenants of the park or to pick up goods from them for delivery elsewhere. The picketing ceased at about 2 p.m., on April 1, although the leased equipment was still stored on the premises. 11/

At about the same time as picketing with Long signs was conducted by Respondent at Rotterdam Industrial Park, similar picketing was initiated by it at the South Mall in downtown Albany and at the Market Square Garage about 6 or 7 miles distant therefrom. 12/ At the latter location, Long had rented two stalls in order to garage two of its tractors which were in use during the day. It occupied no other space there and had no employees stationed there. As to the South Mall, "basically" all Long's equipment was working "at or for the mall" in the

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11/ Apparently as soon as the picketing began, Rotterdam took injunctive action in the New York Supreme Court against Respondent because of such picketing. However, on April 2, the return date of an order to show cause in that proceeding, Respondent advised the Court that the pickets had already been removed and agreed not to picket Rotterdam Park thereafter. The proceeding was resolved on that basis.

12/ Both these locations are at least 12 miles distant from Northeastern Industrial Park and Rotterdam Industrial Park, respectively.

performance for facilities located there of such services as "labor, handling and management." In this connection, Gerald McKenna, the executive vice president of Long, Northeastern and of Rotterdam, testified that Long, a brother-sister corporation of Northeastern, Rotterdam, Distribution, etc., did about $400,000 to $500,000 worth of business at the South Mall during the 3 months before the picketing started, and as a result of the 3 weeks of picketing there by Respondent, 13/ it was deprived of gross profits amounting to $75,000 to $100,000 which would have resulted from business for the mall which it either could not handle or could not accept.

In addition to the testimony as to the aforesaid picketing at the main gate by Respondent with signs naming Long as the employer with whom it had a labor dispute, the record shows that Ward Clark, then acting general manager of Long, 14/ was approached on the subject of his crossing the picket line to go to work by Joseph Baldwin, an employee of Long and a shop steward of its drivers, riggers and operators who were represented for collective bargaining by Respondent. This episode took place on April 8, in front of the Bumble Bee restaurant in Guilderland, and was initiated by Baldwin. According to Clark's uncontradicted testimony, 15/ Baldwin told him that he wished to apologize to him for filing charges against him at the union hall because he crossed the picket line and went to work; that he, Baldwin, did not do this of his own accord; and that his signing the charges meant that he, Clark, could no longer be a member of Respondent. As of the time of the hearing nothing had eventuated from these charges and Clark's payment of dues was still being accepted by Respondent.

13/ As already indicated such picketing was enjoined by Court order on April 9.

14/ It is clear, and I find, that Clark, who had authority to hire and fire Long's employees and who was both responsible for seeing to it that Long's employees properly serviced Respondent's customers and laid out the work for such drivers each day for the following day, was a supervisor within the meaning of Section 2(11) of the Act. Clark became general manager in May 1971.

15/ Baldwin did not testify in this proceeding.

In this connection, Clark testified that, about 3 weeks before the instant hearing, he learned, upon inquiry from Baldwin, that Respondent had refused to process the charges unless Baldwin filed the charges in his own name rather than in the name of a business agent as theretofore.

Along similar lines was further uncontradicted testimony by Clark as to a telephone conversation he had before this, on April 5, with Timothy Lane, a business agent of Respondent, about getting a withdrawal card, as he had just been transferred to a supervisory job. Lane then answered, according to Clark, that he, Clark, and one Robert Johnson, an employee, could be removed from the Union, 16/ the reason being that each of them was crossing the picket line and going to work.

It follows from the uncontradicted testimony of Clark set forth above, and I find, that the remarks to him by Lane and Baldwin on April 5 and 8, respectively, put him in fear of losing his membership in Respondent because he had been going to work in disregard of the picket lines, and thus constituted inducement of him, a minor supervisor, to refuse to perform services for Long. 17/

There was further uncontradicted testimony by Clark as to remarks made to him over the telephone in Long's office on April 2 by Robelotto, president of the Union. 18/ According to Clark, he received a telephone call from Robelotto in which Robelotto indicated that he wished to speak to either Galesi, who was president of Northeastern and its associated companies, or McKenna. As

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16/ The above attribution to Lane was made by Clark, during cross-examination. Although Clark testified, on direct, that Lane said that they would never be able to belong to Respondent again, I am satisfied that his testimony during cross-examination, which is set forth in the text above, more accurately reflects what occurred.

17/ See N.L.R.B. v. Local 294 International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (Van Transport Lines), 298 F. 2d 105 (C.A. 2), enf'g 131 NLRB 242.

18/ Robelotto did not testify in this proceeding.

both men could not be reached by the telephone in Long's office, he not only told Robelotto that they could be reached at another telephone number but offered to get Grimshaw to answer the telephone at hand. Whereupon, also according to Clark, Robelotto answered that he did not wish to talk to Grimshaw, and added, before hanging up the telephone, that "arrangements for a meeting with the officers of the Company had to be made or D.E. Long equipment would not go in and out of the park." I infer and find from the above that Robelotto thereby threatened Long, using Clark as a conduit, that certain officials of Long had to meet with Robelotto or Long's trucks and equipment would not move in and out of Northeastern Park.

Picketing by Respondent also occurred at the point in Northeastern Industrial Park where the D & H railroad spur enters the park. Such access was through a special gate locked by a railroad switch lock, to which only railroad employees have keys. D & H served R & R and other tenants in the park through the gate. R & R was at the time of the picketing one of the largest customers of D & H in this area; it not only received cars almost on a daily basis but also shipped a good number of carloads almost daily. 19/ The pickets, two of whom were usually on duty, carried the same R & R picket signs as were carried by pickets at the main gate on March 25, 26 and part of March 29, and at the reserved gate throughout the picketing period. They picketed only when the one or two trains a day destined for the park arrived, spending the rest of the day in their cars parked nearby along the highway. The records shows these consequences of the picketing at this gate which lasted until it was enjoined on April 9: On March 29, the regular train crew refused to cross the picket line with the train. The freight load then consisted only of freight cars with automobiles for M & G, and two freight

19/ The record also shows that R & R received shipment by rail via Penn Central Railroad cars through another gate in the park. However, that gate was not picketed by Respondent. According to the credible testimony of James R. Williams, the trainmaster of D & H, Bentley told him that he had no way of stopping the Penn Central cars from getting into the park.

cars for Distribution, with no freight cars for R & R. 20/ As a result, delivery was not made on that date. On March 30, there was a similar refusal to cross the picket line. Included in the freight load were carloads of freight consigned to R & R. On this occasion, Williams, the trainmaster, had a conversation with Bentley at the site of the picketing. In answer to Bentley's inquiry as to who the consignees were in this freight load, Williams explained that they were M & G, Distribution and R & R. Williams thereupon requested permission to enter the park, saying that if the train was allowed to enter the park, D & H would not do any business with R & R on that day, i.e., the freight cars consigned to R & R would not be placed. 21/ Williams' request was refused by Bentley because, as Bentley said, he could not be sure that Williams would keep his word. Delivery of these freight cars, which was precluded on these days, apparently occurred on April 1, through the use of a crew composed of D & H supervisors. Except as noted immediately hereinafter, such deliveries as were made from that time forth until picketing was enjoined on April 9 by Court action were by supervisors. Thus, on occasions after April 1, when the train carried no freight cars consigned to R & R, D & H police were able to get the pickets to turn their signs or take them down, and, in those instances, the regular train crew entered the park with their cargo. It also appears that, on one occasion, Respondent agreed to turn the picket signs to allow a regular crew of D & H to move empty railroad cars out of the park.

4. Long's employee complement and Long's labor relations with Respondent

As heretofore found, Long is a brother-sister corporation of Northeastern, Rotterdam and Distribution, among others. Each of these corporations has virtually the

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20/ Williams testified that there were other times during the period of picketing when the load did not include any freight cars consigned to R & R, but he could not recall the dates thereof.

21/ According to Williams, he had no place where he could switch out the freight cars consigned to R & R because there was just one track entering the park.

same management. Long occupies building space in Northeastern Park and is engaged in freight handling. It employs drivers, riggers and operators etc., to do its production work. These employees are represented by Respondent, and the terms of the last contract between Respondent and Long, although not renewed, are still being applied. In its office in this building space are stationed three individuals, namely, Clark; Gus Pallone, the office manager; and Francis Coviello, a part-time office clerical. Of these three only Clark and Pallone are members of Respondent. I have heretofore found that Clark is a supervisor within the meaning of the Act. As Pallone, like Clark, has authority to hire and fire, and oversees the work of the drivers, riggers and operators, albeit to a lesser degree, I conclude, and find further, that Pallone is also a supervisor within the Act's meaning. It is apparent from the record that, while Long and Respondent have met on different occasions concerning effecting a renewal of the contract referred to above, at no time has Respondent made inquiry of any official or supervisor of Long concerning the working conditions or benefits of office clerical employees, or sought recognition for, or contract coverage of, this category of employees, which has hitherto not been included in the contract unit. Indeed, Respondent admitted in its answer that it had no labor dispute with Long, and Grimshaw testified credibly that upon inquiring from Bentley and Spacioso on March 25, he was assured that Respondent's dispute was only with R & R and not with Long as well as other tenants mentioned by him. It is thus clear, and I find, that, at no time material herein, did Respondent have a bona fide labor dispute with Long with respect to Long's office clerical employees.

5. The conversation between representatives of Respondent and Northeastern outside the courthouse on April 2

As already noted, April 2 was the return date of a rule to show cause issued in proceedings before the New York Supreme Court as to why Respondent should not be enjoined from picketing Rotterdam Park. No formal hearing was held, however, as, prior thereto, a settlement of the matter was reached in the chambers of Judge Kane. On the same day, after the conclusion of the above, there was a conversation outside the courthouse between representatives of Respondent and Northeastern. Present were Harry Pozefsky, Esq., counsel for Respondent in that

proceeding and in the instant proceeding; Lane and Bentley, two of Respondent's business agents; Grimshaw and McKenna, respectively vice president and executive vice president of Northeastern; and Frank J. Williams, Esq., counsel to Northeastern in the court proceeding referred to above. The testimony is in sharp conflict as to what was the burden of the proposal then made by Pozefsky in behalf of Respondent to Northeastern. According to a composite of the mutually corroborative testimony of Grimshaw, McKenna and Williams, Pozefsky approached them and indicated that Respondent was anxious to picket R & R inside the park in the area immediately around R & R's building, and that, if Northeastern would permit such action, they would stop the picketing of Long; and further that Grimshaw then asked Lane if he was in agreement with this proposal and Lane answered in the affirmative, to which Grimshaw replied that he would discuss the matter with legal counsel and try to determine what was the legal and insurance liability of Northeastern to its tenant, and would advise Respondent after such discussion. During cross-examination, both McKenna and Williams, in effect, denied that the burden of Pozefsky's request was that Northeastern establish a separate reserved gate for Long as it had theretofore done for R & R. 22/ And later, during rebuttal, Grimshaw testified that he could not recall any discussion of a separate gate for Long. In contrast to the above was the following testimony by Bentley and Lane: 23/ According to the former, during this episode, he asked a representative of Northeastern, whom he did not identify, to allow Respondent to picket R & R inside the park and that he offered nothing in return. In addition, when asked, on direct, as to whether anything was said by Pozefsky or anyone else about pickets being removed if the R & R pickets were allowed into the compound, he replied, "my recollection is that the only thing that was mentioned is that we wanted to

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22/ McKenna could not recall such a request being made and, when pressed as to whether Pozefsky did mention the R & R gate and the pickets at that gate, he answered, "I don't specifically recall that being mentioned. It probably was, but I don't specifically recall it."

Williams denied that a separate gate for Long was ever mentioned by Pozefsky, insisting that it was mentioned only with respect to R & R.

23/ Harry Pozefsky, Esq., did not testify.

picket R & R inside the park and that we were going to remove the D.E. Long pickets from Rotterdam Ventures and that was it." 24/ Lane, on the other hand, testified that Pozefsky asked that a special gate be set up for Long and there would then be no problem about trucks going in and out; and when asked what trucks were being mentioned, Lane answered, "I would say, D.E. Long's." It is obvious, however, from this and other testimony by Lane as to the nature of the conversation during that episode that he was confused, and I so find. Accordingly, I do not accord his testimony any probative weight. And, as Bentley's testimony tends to give support to the testimony of Grimshaw, McKenna and Williams and argues against any finding that Pozefsky talked about a separate gate for Long, I find that the mutually corroborative testimony of Grimshaw, McKenna and Williams preponderates in favor of a finding that Pozefsky then offered in behalf of Respondent to stop its action against Long, including its picketing of Long at the main gate, if Northeastern would allow Respondent to picket R & R around the building occupied by R & R inside the compound.

6. The Section 10(1) injunction proceeding

The parties stipulated that the Board, acting through the Regional Director for the Third Region of the Board, filed with the United States District Court for the Northern District of New York a petition for an injunction under Section 10(1) of the Act; that, on April 2, Judge James T. Foley issued an order to show cause to Respondent herein in Case No. 17-CV-164; that Respondent filed its answer thereto under date of April 5; that, on April 9, Judge Foley issued from the bench an oral temporary restraining order as prayed for in the petition; and that, on April 13, he affirmed the temporary restraining order and issued a temporary injunction pending the conclusion of the substantive proceeding before the Board.

7. Analysis and Conclusions

It is apparent from all the foregoing that the labor dispute herein was between Respondent and R & R, and arose over the refusal of R & R to recognize Respondent as the exclusive bargaining agent of its warehouse employees; and that, although Northeastern, M & G, Starrett, Two Guys, Newberry, Rotterdam,

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24/ At another point, during cross-examination, Bentley testified that all that was said, outside the courthouse, was to repeat what was said inside.

Distribution, D & H, and Long did not have a labor dispute with Respondent, they became enmeshed in the dispute between Respondent and R & R. In this connection, I have found (1) that Respondent picketed Northeastern Park, where Northeastern is the owner and operator and where the other companies named immediately above are tenant-employers, from March 25 until such picketing was enjoined by Court action on April 9; (2) that nothwithstanding the fact that, by the afternoon of March 26, a valid reserved gate, namely, Gate No. 9, was established by Northeastern for R & R, Respondent picketed R & R at Gate No. 1, the main gate, as well, during all of March 26 and for most of March 29 (3) that Respondent did cease its picketing of R & R at the main gate around 4 p.m., on March 29 , and then commenced picketing Long at that gate, although it admitted in its answer herein, and other credible testimony establishes, that it did not then or at any time material herein have a labor dispute with Long; (4) that on March 31 and on April 1, Respondent also picketed Long at the only truck gate at Rotterdam Park, where neither Long nor R & R was a tenant or had employees, and where Long was storing two leased tractors at the time, which could not be brought into Northeastern Industrial Park because of the picketing there by Respondent; (5) that starting at about the same time and until April 9, Respondent also picketed Long both at the Market Square Garage and at the South Mall in Albany, New York, the situation being that, at the first-mentioned location, Long had rented two stalls in order to garage two of its tractors, but had no employees stationed there, and at the South Mall, Long had rented no space but was working "basically" all its equipment in the performance of "labor, handling and management" for the facilities located there; and (6) that Respondent picketed R & R, from March 29 until enjoined on April 9, at the railroad gate in Northeastern Park, at which point rail deliveries by D & H destined for R & R, Distribution and M & G entered the compound. In addition to the above, I have found that there were the following oral communications between representatives of Respondent and representatives of Northeastern and Long: (1) On March 25, Respondent's president, Robelotto, and its business agent, Bentley, each threatened Grimshaw, the vice president of Northeastern, in substance, that unless Respondent was allowed by Northeastern to picket R & R around R & R's premises inside Northeastern Park, Respondent would, by its picketing, tie up the whole park; (2) On April 2, representatives of Respondent offered to stop its action against Long, including its picketing of Long at the

main gate of Northeastern Park, if Northeastern would allow it to picket R & R around the building occupied by R & R inside the compound; (3) on April 2, Robelotto threatened Long, through Clark, its supervisor, that certain officials of Long had to meet with Robelotto or Long's equipment would not go in and out of Northeastern Park; and (4) on April 5 and on April 8, Respondent, through its agents Lane and Baldwin, respectively, put Clark in fear of losing his membership in Respondent because he had been going to work in disregard of the picket lines and Respondent thereby engaged in inducement of Clark not to perform services for Long.

The law is clear that Respondent could, under the proviso to Section 8(b)(4)(B), lawfully engage in "a primary strike or primary picketing" against R & R but could not, for proscribed objectives, threaten, restrain or coerce employers or persons who were neutral to the labor dispute, or induce or encourage employees of such neutrals to engage in a strike or refusal to perform services. Considering in this connection the picketing of Long by Respondent, it is noteworthy that Respondent did not have a bona fide labor dispute with Long; that its picketing of Long at the main gate of Northeastern Park coincided with its cessation of picketing of R & R at that gate (Respondent thereafter picketed with R & R signs only at the reserved gate, namely, Gate No. 9, and at the D & H railroad gate); that representatives of Respondent had prior thereto, in substance, threatened to tie up the whole park unless Respondent was allowed to picket R & R around the building occupied by it inside the park; and that Respondent offered to Northeastern, several days after it commenced its picketing of Long, to stop its picketing of Long at the park and at other locations if it were allowed to picket inside the compound. Accordingly, I am satisfied, and I infer and find, that the changing of the picket signs by Respondent at the main gate, i.e., Gate No. 1, to indicate that the target of its picketing was Long and not R & R, as theretofore, constituted an attempt to mask the basic purpose of the continued picketing at the main gate, and that such basic purpose remained unchanged throughout. 25/

25/ See Teamsters, Chauffeurs, Warehousemen and Helpers Union, Local 431 (California Association of Employers), 120 NLRB 1161; and Lafayette Building and Construction Trades Council et al. (Southern Construction Corporation), 132 NLRB 673.

a. The picketing at the main gate in Northeastern Park

It is apparent, and I find, that Northeastern Park is a common situs 26/ and that Moore Dry Dock criteria are to be applied to the picketing herein 27/ which began on March 25 at that location. In this connection, the Board made the following observations in the case of Building and Construction Trades Council of New Orleans (Markwell and Hartz, Inc.), 155 NLRB 319, enf'd 387 F. 2d 79 (C.A.):

> In our opinion application of these standards to all common situs situations, including those, which like the instant case, involve picketing of gates reserved exclusively for neutral contractors on a construction project, serves the "dual congressional objectives" underlying the boycott provisions of the Act.
>
> The instant facts, when considered in the light of the legislative history and decisional precedent, do not warrant a departure from our long-established policy with respect to common situs packeting. Quite to the contrary, our continued adherence to the Moore Dry Dock standards in such cases comports with the clear expression of Congress, '

26/ See Retail Fruit & Vegetable Clerks Union, Local 1017, et al. (Crystal Palace Market), 116 NLRB 856, enf'd in 249 F. 2d 591 (C.A. 9), which defines a common situs as "premises jointly occupied by primary and secondary employers."

27/ The standards set forth in Moore Dry Dock Co., 92 NLRB 547, are, in substance, that the picketing disclosed that the dispute was with the primary employer, that the picketing occurred when the situs of the dispute was located on the premises of the secondary employer, that the picketing was limited to the situs of the dispute and that the primary employer was then engaged in its normal business at the situs.

These standards are, however, not to be applied in an indiscriminate per se basis, but are to be regarded merely as aids in determining the underlying statutory violation. See International Brotherhood of Electrical Workers, Local Union 861 and Arneth Lard, its agent (Plauche Electric Inc.), 135 NLRB 250; International Brotherhood of Electrical Workers, Local Union No. 11, AFL-CIO, et al. (L.G. Electric Contractors Inc. et al), 154 NLRB 766.

in enacting the "primary strike and picketing" proviso, that said proviso ". . . does not eliminate, restrict, or modify the limitations on picketing at the site of a primary dispute that are in existing law." Nor do the Supreme Court's decisions in General Electric and Carrier detract from our conclusions in this regard; for, the mere fact that picketing of a neutral gate at premises of a struck employer, may in proper circumstances be lawful primary action, does not require a like finding when a labor organization applies direct pressure upon secondary employers engaged on a common situs. That the Supreme Court had no intention of overriding this historic distinction is evidenced by its express approval of the Moore Dry Dock standards, and its observation that the General Electric case did not present a common situs situation to which the Moore Dry Dock standards should apply. It is plain, therefore, that the Court did not seek to interfere with the Board's traditional approach to common situs problems; rather, the Court's decisions in General Electric and Carrier Corp. merely represent an implementation of the concomitant policy that lenient treatment be given to strike action taking place at the separate premises of a struck employer. (Underscoring appears in italics in the text; footnotes in the text have, however, been omitted.)

I am aware, in this connection, of Respondent's contention, in its brief, that "The separate gate situation at Northeastern in fact is neither governed by a construction site separate-gate law nor is the General Electric rule entirely applicable." 28/ However, I am persuaded, and find, contrary to Respondent, that there is no warrant for not applying Moore Dry Dock standards to the separate gate here. This is so because Northeastern Park, like a construction site, is a common situs, and the reasons governing the application of these standards to a reserved gate on a construction site apply at least with equal force to a reserved gate at such an installation. I note, too, that Respondent, in effect, agreed on the first day of its picketing to confine it to the gate reserved for that purpose. Nor do I find merit in Respondent's challenge, in its brief, to the binding effect upon it of a reserved gate established, as here, by an owner and operator of an industrial

28/ Local 761, International Union of Electrical Radio and Machine Workers, AFL-CIO v. N.L.R.B. (General Electric Company), 366 U.S. 667.

park for a tenant-employer in the park. For, apart from other considerations, since the record shows that Northeastern intervened at the request of R & R, it was, I find, acting as the agent of R & R in this respect. Nor does the following incident buttress Respondent's argument here: The record shows that, on March 29, Respondent agreed to allow a truck of a carrier to enter Gate No. 9 in order to make a pickup from R & R of hospital supplies. However, the truck, in accomplishing its mission, entered and left through the main gate without incident. At the time, the main gate was guarded by an employee of Wackenhut, an independent contractor, who shared with Northeastern's own security personnel the maintenance of security in Northeastern Park. Upon learning of this episode, Northeastern placed its own security personnel at the main gate thereafter, as it had already done at Gate No. 9. I am satisfied, and find, that this single incident does not destroy the effectiveness of Gate No. 9 as a separate or reserved gate, particularly where, as here, Northeastern took steps to prevent a recurrence. 29/

In view of all the above, I conclude, and find, that Respondent's picketing of R & R on and after about 2 o'clock of the afternoon of March 26, at the main gate, posted for tenant-employers other than R & R, violated Moore Dry Dock requirements that such action take place reasonably close to the situs of Respondent's dispute with R & R, and, as such, exceeded permissible bounds. 30/

b. The picketing of Long at other locations than Northeastern Park

Respondent's aforesaid picketing at the main gate clearly establishes that, at no time, did Respondent attempt to minimize the effect of its picketing on the operations of the neutral employers using the park. Indeed, in the case of Long, it not only made Long a specific target of its picketing at Northeastern Park on the feigned ground that it had a labor dispute with Long, but extended the picketing of Long to

29/ See Allied Industrial Workers of America, Local 681, AFL-CIO (Smith Engineering Works), 174 NLRB No. 61.
30/ See Building and Construction Trades Council of New Orleans (Markwell and Hartz, Inc.), supra; Lafayette Building and Construction Trades Council (Texaco Inc.), 176 NLRB No. 137.

other locations at which Long either stored equipment, or rented garage space, or did business, and where R & R had no employees and occupied no space. Thus, as detailed hereinabove, Respondent picketed Long, respectively, at Rotterdam Park, which is another industrial park; at the Market Square Garage in Albany; and at the South Mall in Albany. Accordingly, I find, here too, that Respondent's picketing of Long at these locations, like the picketing of Long at the main gate of Northeastern Park, exceeded permissible bounds because it was plainly aimed at inducing either strike action or a refusal to perform services by employees of employers and persons other than R & R, albeit, it had no dispute with them.

c. The picketing at the D & H railroad gate in Northeastern Park

As already found, D & H served R & R and other tenants in the park through this gate. While it is true that the Supreme Court held in United Steelworkers of America, AFL-CIO, et al. v. N.L.R.B. (Carrier Corporation), 376 U.S. 492, that protected primary picketing includes picketing at a railroad gate reserved for employees of the railroad furnishing day-to-day service essential to the struck employer's operations, it did so in a context in which the picketing employees made no attempt to interfere with any of the railroad's operations for plants belonging to employers at the common situs other than the struck employer and in which the railroad employees were not encouraged to, nor did they refuse to, serve the other plants. Here, however, as I have found, although the freight load of D & H consisted on March 29 only of freight cars with goods for tenant-employers other than R & R, the railroad employees, because of the picket line, refused to serve the other tenant-employers. And again, on March 30, when the freight load did contain freight cars of goods for R & R as well as freight cars for other tenant-employers, Respondent's business agent, Bentley, refused to accept assurances from James R. Williams, the railroad's trainmaster, that, if allowed to enter with the freight load, D & H would not do any business with R & R, i.e., the freight cars consigned to R & R would not be placed. Here again, the railroad employees refused to cross because of the picket line. In these circumstances, it follows, and I find, that the picketing had as an object enmeshing neutral employers, in this instance D & H and tenant-employers at Northeastern Park other than R & R to whom D & H was making deliveries.

And even apart from the foregoing, the fact that this was an object of the picketing, both at the main gate and here, derives from the threats to Grimshaw on March 25 by Bentley, as well as by Robelotto, the president of Respondent, that unless Respondent was allowed to picket R & R inside the park, Respondent would, by its picketing, tie up the whole park. Accordingly, I find, contrary to Respondent, that the picketing at the railroad gate exceeded permissible bounds of protected primary picketing.

It follows further from all the foregoing, including particularly Bentley's and Robelotto's separate threats to tie up Northeastern Park if Respondent were not allowed to picket R & R inside the park, that Respondent's picketing and communications heretofore described were for objects proscribed by Section 8(b)(4) of the Act, viz., (1) forcing or requiring Northeastern, M & G, Starrett, Two Guys, Newberry, D & H, Rotterdam, Distribution and Long, and other persons to cease using, selling, handling, transporting or otherwise dealing in the products of, and to cease doing business with, R & R; and (2) forcing or requiring R & R to recognize and bargain with Respondent as representative of R & R's warehouse employees, although Respondent had not been certified as a representative of such employees under the provisions of Section 9 of the Act. And as already found herein, the consequences of the picketing for these illegal objects were numerous costly stoppages of deliveries to, and other adverse monetary effects on, these enmeshed secondary employers. 31/

31/ In this connection, I find no merit in Respondent's contention, in its brief, that Northeastern and its associated companies, among which are Long, Distribution and Rotterdam, were not secondary employers herein, as Northeastern and R & R "had a legal relationship beyond landlord and tenant." Respondent appears to rest its claim on the fact that when R & R terminated its occupancy in Northeastern Park on or about May 10, 1971 (1) Distribution took over building 8 in the park, which was occupied by R & R, as well as premises occupied by an important customer of R & R; that the goods of customers of R & R were thereafter warehoused in the same way as R & R had done; that Distribution billed customers for warehouse services on goods removed thereafter; and that Distribution hired Canham, the supervisor of R & R, to perform the same services for it; and (2) with respect to portions of building 4, 7 and 3 in the (Continued)

It follows, too, since the picketing herein induced and encouraged employees of secondary employers herein, as well as of their customers or suppliers, to engage in a strike or a refusal in the course of their employment to transport or otherwise handle or work on any goods, articles, materials or commodities or to perform any services at the picketed locations, that the inducement and encouragement requirement of the alleged violation of Section 8(b)(4)(i)(B) of the Act has been established. And further, in view of my findings above (1) that Respondent's agents, Bentley and Robelotto, separately threatened Grimshaw, vice president of Northeastern, to tie up all of Northeastern Park unless Respondent was allowed to picket R & R inside the park, and (2) that Robelotto threatened Long, using Clark, a supervisor of Long, as a conduit, that certain officials of Long had to meet with Robelotto or Long's equipment would not go in and out of Northeastern Park; and in view of the aforesaid picketing itself, it follows, and I find, that the restraining and coercing which is part of the alleged violation of Section 8(b)(4)(ii)(B) of the Act has been established. In sum, therefore, I conclude, and find, that Respondent has, by the foregoing described conduct, violated Section 8(b)(4)(i) and (ii)(B) of the Act.

31/ (Continued) park which had been occupied by R & R and were also taken over by Northeastern, R & R's customers therein remained with Northeastern and were billed by Northeastern. However, as Respondent points, in support of its contention, to nothing antedating the eviction action against R & R by Northeastern, which culminated in a settlement to the effect that R & R was to vacate the premises occupied by it in the park and to assign to Northeastern some of its accounts, and as the eviction action argues against a relationship between Northeastern and R & R other than that of landlord and tenant before the relationship was terminated, there is no warrant for finding that Northeastern or any of its associated companies was an alter ego of R & R prior thereto. Nor is there any warrant on this record for finding that Northeastern and its associated companies are by reason of the developments resulting from the settlement of the eviction proceeding now successors to R & R. Viewing the facts most favorably to Respondent, what was effected here was an expansion of the existing warehousing business of Northeastern and its associated companies at Northeastern Park by the furnishing of warehousing services to former customers of R & R. The case of Columbia Marine Service, Inc., 191 NLRB No. 20, relied upon by Respondent, is clearly distinguishable on its facts.

Upon the basis of the above findings of fact and upon the entire record in the case, I make the following:

Conclusions of Law

1. Respondent is a labor organization within the meaning of Section 2(5) of the Act.

2. Northeastern, Long, M & G, Starrett, Two Guys, Newberry, Distribution, Rotterdam, D & H and R & R are employers, as defined in Section 2(2) of the Act, engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

3. By the conduct set forth in Section III, supra, Respondent has induced and encouraged employees of Northeastern, Long, M & G, Starrett, Two Guys, Newberry, Distribution, Rotterdam and D & H and their customers or suppliers to engage in a strike or refusal in the course of their employment to perform services, and has threatened, coerced and restrained Northeastern, Long, M & G, Starrett, Two Guys, Newberry, Distribution, Rotterdam and D & H with the objects (1) of forcing or requiring them to cease using, selling, handling, transporting or otherwise dealing in the products of, and to cease doing business with, R & R; and (2) of forcing or requiring R & R to recognize and bargain with Respondent as representative of R & R's warehouse employees, although Respondent had not been certified as a representative of such employees under the provisions of Section 9 of the Act, and has thereby engaged in unfair labor practices within the meaning of Section 8(b)(4)(i) and (ii)(B) of the Act.

4. The aforesaid unfair labor practices are unfair labor practices within the meaning of Section 2(6) and (7) of the Act.

The Remedy

Having found that Respondent has violated Section 8(b)(4)(i) and (ii)(B) of the Act, I will recommend that it cease and desist therefrom and that it take certain affirmative action designed to effectuate the policies of the Act. And in accordance with the separate requests of the General Counsel and the Charging Parties in their briefs, I recommend further that Respondent be broadly enjoined from

engaging in any more such boycotts in the future. As noted by them, the proclivity of Respondent to violate the Act and especially Section 8(b)(4) thereof has been referred to by the Board and the Courts in N.L.R.B. v. Local 294, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (Van Transport Lines) supra, and in N.L.R.B. v. International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local 294 (Island Dock Lumber Company Inc.), 145 NLRB 484, enf'd in 342 F. 2d 18 (C.A. 2). Additionally, as pointed out by the General Counsel, violations by Respondent of Section 8(b)(4) of the Act since these decisions have been numerous, with resultant Board or Court decisions, e.g., Local 157 Laborers' International Union of North America, AFL-CIO, Local 294, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, et al (T.J. Madden Construction Co. Inc.), 168 NLRB 826, (issued in December 1967); Local 294, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (The Great Atlantic and Pacific Tea Company, Inc.), 169 NLRB 1491 (issued in January 1969); Irving v. Local 294, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers, 71 LRRM 3098 (C.A. 2), a decision in a contempt action (issued in July 1969) in which Respondent was adjudged in civil contempt of a court order issued under Section 10(1) of the Act, enjoining interference with the assignment of disputed work to a rival union within the South Mall (a location involved herein); Local 294, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (Bethlehem Steel Corporation), 180 NLRB No. 75 (issued in December 1969); and Local 294, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (Gene Graham Ford, Inc.), 188 NLRB No. 81 (issued in February 1971).

Upon the basis of the foregoing findings of fact and conclusions of law, and upon the entire record in this case, I hereby issue the following recommended: 32/

32/ In the event no exceptions are filed as provided by Section 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, and recommended Order herein shall, as provided in Section 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and Order, and all objections thereto shall be deemed waived for all purposes.

ORDER

Respondent, its officers, agents and representatives shall:

1. Cease and desist from:

(a) Inducing or encouraging any individual employed by Northeastern Industrial Park, Inc., D.E. Long Rigging and Hauling, Inc., M & G Convoy Inc., Starrett-Modular Construction, division of Starrett & Eken, Inc., Two Guys from Harrison, Inc., J.J. Newberry Co. Inc., Distribution Unlimited Inc., Rotterdam Ventures, Inc., and Delaware and Hudson Railway, or any other person engaged in commerce or an industry affecting commerce, to engage in a strike or refusal in the course of his employment to perform services; or threatening or coercing or restraining the aforesaid named employers or any other person with an object of (1) forcing or requiring any person to cease using, selling, handling, transporting or otherwise dealing in the products of, or to cease doing business with, R & R Handling Centres, Inc., or any other person; or (2) forcing or requiring R & R Handling Centres, Inc., or any other employer to recognize and bargain with Respondent as the representative of its employees, although Respondent has not been certified as representative of such employees under the provisions of Section 9 of the Act.

2. Take the following affirmative action designed to effectuate the policies of the Act:

(a) Post at its meeting halls and offices copies of the notice attached marked "Appendix." 33/ Copies of said notice, on forms provided by the Regional Director for Region 3, after being signed by a representative of Respondent, shall be posted by Respondent immediately upon receipt thereof and be maintained for 60 consecutive days thereafter in conspicuous places, including all places where notices to members are customarily posted. Reasonable steps shall be taken by Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(b) Sign and mail sufficient copies of said notice to the said Regional Director for posting by the aforesaid named employers, if they are willing, at locations where notices to their employees are customarily posted.

33/ In the event the Board's Order is enforced by a judgment of a United States Court of Appeals, the words in the notice reading "POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD" shall be changed to read "POSTED PURSUANT TO A JUDGMENT OF THE UNITED STATES COURT OF APPEALS ENFORCING AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD."

(c) Notify the said Regional Director, in writing, within 20 days from the date of the receipt of this Trial Examiner's Decision, what steps Respondent has taken to comply herewith. 34/

Dated at Washington, D.C. NOV 1 1971

Harry H. Kuskin
Trial Examiner

34/ In the event that this Recommended Order is adopted by the Board after exceptions have been filed, this provision shall be modified to read: "Notify said Regional Director, within 20 days from the date of this Order, what steps Respondent has taken to comply herewith."

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

NORTHEASTERN INDUSTRIAL PARK INC. and D. E. LONG, INC., Plaintiffs, -against- LOCAL 294, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, Defendant.	CIVIL ACTION NO. 73-CV-125 REPLY TO PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

NOW COMES the Defendant by its attorneys, Pozefsky, Tocci & Pozefsky, and in reply to Plaintiffs' Motion for Summary Judgment, says that Plaintiffs are not entitled to a Summary Judgment for the following reasons:

1. Plaintiffs are not entitled to summary judgment as a matter of law since the determination by the National Labor Relations Board is not properly entitled to res judicata effect under the facts and circumstances of this case and the applicable law.

2. Plaintiffs are not entitled to summary judgment as a matter of law in that the determination by the National Labor Relations Board was not enforced by an appropriate Court, and there has been no judicial determination of whether a full and fair hearing was held, whether the findings of fact and conclusions of law were properly supported by the evidence or whether the law was properly applied, all of which must be judicially determined before an administrative decision may be given res judicata effect.

Pozefsky, Tocci &
HARRY POZEFSKY
ATTORNEY-AT-LAW
20 SOUTH MAIN STREET
GLOVERSVILLE, N. Y.

3. Plaintiff D. E. Long, Inc., in any event is not entitled to summary judgment as a matter of law, since:

(a) As appears from the Affidavit of William Pozefsky annexed hereto, D. E. Long, Inc. and Defendant were parties to a labor agreement pursuant to the terms of which the parties contracted that all controversies, grievances or contract disputes, including the Defendant's participation in an authorized work stoppage or walkout in violation of a no-strike agreement contained in said labor agreement, must be processed under the grievance procedure contained in said labor agreement prior to the institution of any damage action or lawsuit, and that no such grievance has been instituted by Plaintiff D. E. Long, Inc.

(b) D. E. Long, Inc. was not a party to the National Labor Relations Board proceedings and said proceedings may not be given res judicata effect as between this Defendant and Plaintiff D. E. Long, Inc.

4. As appears from the aforesaid Affidavit, there is an issue of material fact which was not determined before the National Labor Relations Board with respect to the question of whether the Plaintiff Northeastern Industrial Park, Inc. improperly prohibited the Defendant from picketing the building occupied by one R. & R. Handling Centres, Inc. within the confines of the industrial park owned by the said Plaintiff, thus requiring Defendant to picket outside the industrial park, with the result that the damages sought in this action by Plaintiff Northeastern Industrial Park, Inc., and its alter ego corporation, Plaintiff D. E. Long,

Pozefsky, Tocci &

HARRY POZEFSKY
ATTORNEY-AT-LAW
30 SOUTH MAIN STREET
GLOVERSVILLE, N. Y.

Inc., were caused by Plaintiff's own wrongdoing.

WHEREFORE, Defendant requests that the Court deny Plaintiffs' Motion for Summary Judgment.

Dated: June 13 , 1975

POZEFSKY, TOCCI & POZEFSKY
Attorneys for Defendant
Office & P. O. Address
30 South Main Street
Gloversville, New York 12078
Tel. (518) 725-0609

'ozefsky,Tocci&
HARRY POZEFSKY
ATTORNEY-AT-LAW
30 SOUTH MAIN STREET
GLOVERSVILLE, N. Y.

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF NEW YORK

NORTHEASTERN INDUSTRIAL PARK, INC. and D.E. LONG, INC., Plaintiffs, -against- LOCAL 294, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, Defendant.	AFFIDAVIT

WILLIAM POZEFSKY, being duly sworn deposes and says:

I am a member of the firm of Pozefsky, Tocci, & Pozefsky attorneys for the Defendant herein, and as such have knowledge of the facts hereinafter set forth.

1. The transcript of the proceedings before the National Labor Relations Board, incorporated by reference in the Plaintiffs' motion indicates that the Defendant initiated picketing of R & R Handling Centres, Inc. around the building occupied by that company located inside the enclosed Industrial Park owned by Plaintiff Northeastern Industrial Park, Inc. A representative of said Plaintiff thereafter advised Defendant that it would not be able to continue picketing inside the Park, and required the picketing to take place outside the park, and as a result, Defendant began picketing outside the main gate and, subsequently, outside a reserve gate located approximately 1 1/2 miles from the main gate. It is submitted that there is a material issue of fact whether the actions of the Plaintiff Northeastern Industrial Park, Inc. in excluding the Defendant from the Park, caused

HARRY POZEFSKY
ATTORNEY-AT-LAW
30 SOUTH MAIN STREET
GLOVERSVILLE, N. Y.

the very damages which Plaintiff Northeastern Industrial Park, Inc. and D.E. Long Inc. its alter ego which shared common management and similar ownership with Northeastern, now seek to redress.

2. The Plaintiff D.E. Long, Inc. and Defendant were parties to a labor agreement. Pursuant to Article 8, Section 3b, pages 39, 40, and 41 of the labor agreement, a copy of which is attached to Defendant's Answer herein, said Plaintiff became obligated to arbitrate all controversies, grievances and all contract disputes under the grievance procedure prior to the institution of any "damage suit action." To the best of my knowledge, no such arbitration procedure has been processed by Plaintiff D.E. Long, Inc. Accordingly,this suit is not now properly maintainable by said Plaintiff.

3. No unfair practice charge was filed by Plaintiff D.E. Long, Inc. against Defendant. Said Plaintiff was not a party to the National Labor Relations Board's proceedings upon which it seeks to rely for res judicat purposes. As between that Plaintiff and this Defendant, said proceeding has no res judicata or collateral estoppel value.

WILLIAM POZEFSKY

Sworn to before me this

day of June 1975.

Notary Public

MARGARET E. JACKSON
Notary Public, State of New York
Qualified in Fulton County
My Commission Expires March 30, 19[illegible]

HARRY POZEFSKY
ATTORNEY-AT-LAW
30 SOUTH MAIN STREET
GLOVERSVILLE, N. Y.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

NORTHEASTERN INDUSTRIAL PARK, INC. and
D. E. LONG, INC.,

Plaintiffs,

-against- 73-CV-125

LOCAL 294 INTERNATIONAL BROTHERHOOD OF
TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN
AND HELPERS OF AMERICA,

Defendant.

APPEARANCES: OF COUNSEL:

FRANK J. WILLIAMS, JR.
Attorney for Plaintiffs
11 North Pearl Street
Albany, New York 12207

POZEFSKY, TOCCI & POZEFSKY
Attorneys for Defendant
112 State Street
Albany, New York 12207

WILLIAM POZEFSKY

JAMES T. FOLEY, D.J.

MEMORANDUM-DECISION and ORDER

This suit is for substantial money damages by the two corporate plaintiffs and is instituted under Section 303 of the Labor Management Relations Act, 29 U.S.C. § 187 (1970) for alleged activity or conduct on the part of the Defendant Union that constituted an unfair labor practice as defined in the Act.

The motion at hand is a single one filed on behalf of both plaintiffs and seeks relief that will have important effect upon the trial of the issues, scheduled to commence on October 21, 1975 in Albany. The relief sought for each plaintiff is summary judgment under F. R. Civ. P. 56(c) on the issue of liability alone in their respective causes on the ground such issue in each cause is res judicata. Alternatively, under F. R. Civ. P. 56(d), an order is requested specifying the facts that appear without substantial controversy.

A brief background statement will be helpful. Arising out of the same incidents of picketing and other conduct made the basis

for the claims here was first the familiar 10(1) proceeding under the National Labor Relations Act for a temporary injunction. A hearing was held before me on the application on April 9, 1971, and in an unusual ruling in my experience, I granted a temporary restraining order from the Bench at the conclusion of the hearing, and by formal memorandum-decision and order dated April 13, 1971, granted and issued the temporary injunction requested against the picketing. Thereafter, the usual proceedings before the National Labor Relations Board took place and it is upon those administrative proceedings and decisions that plaintiffs rely for their request here in this motion for res judicata determination on the issue of liability. A Trial Examiner of the National Labor Relations Board heard the charges of violations of Section 8(b)(4)(i) and (ii) B of the National Labor Relations Act [29 U.S.C. § 158(b)(4)(i)(B) and (ii)(B)]. An extensive decision by the Trial Examiner dated November 1, 1971, found and concluded Local 294, the defendant here, violated the Section of the Act referred to above. This decision was affirmed by a three-member Panel of the Board with certain procedural modification pertaining to sending of notices by decision dated April 14, 1972. These decisions are appended to the present motion papers of the plaintiffs.

In my judgment, and after review of the decisions and administrative record, it seems clear there is a situation presented that warrants the application of the res judicata principle to the claim of the plaintiff Northeastern Industrial Park, Inc., on the issue of liability. The only issue remaining in that claim would be the damages sustained by the unfair labor practices found after full hearing that were inflicted upon it. The principle stated by the United States Supreme Court in United States v. Utah Constr. Co., 384 U.S. 394, 421-422, that the courts should not hesitate to apply res judicata where disputed issues of fact have been resolved administratively after adequate opportunity to litigate was afforded must be given effect in this instance. My reading of the proceedings

before the Trial Examiner insures, I believe, the requisites were present of full hearing, same attorneys, same parties, opportunity to present evidence, examine and cross-examine, to apply res judicata to the administrative determination. The hearing transcript runs from pages 1 through 295. The Senior member of the firm, Harry Pozefsky, an eminent and experienced labor attorney, representing the defendant in the action, appeared in the administrative proceeding and called three witnesses -- one as an adverse witness, the Vice President of plaintiff Northeastern and, as shown on page 293 of the hearing transcript, at the close of the hearing Attorney Pozefsky was asked by the Trial Examiner if he had any surrebuttal. It is evident the hearing was fair and full, with no restriction on complete development by the Union in defense to the unfair labor practice charges.

The support for the reasoning and ruling comes from persuasive cases offered by the attorney for the plaintiff in which the Court of Appeals, Fifth Circuit, applied res judicata in labor cases of this kind. See Painters Dist. Coun. No. 38, etc. v. Edgewood Contracting Co., 416 F.2d 1081 (5th Cir. 1969); H. L. Roberston & Assoc. Inc. v. Plumbers Loc. Un. No. 519, etc., 429 F.2d 520 (5th Cir. 1970). A valid and persuasive distinction to my mind is made in the Painters opinion, at page 1085, fn. 5, concerning the Old Dutch Farms, Inc. v. Milk Drivers & Dairy Employees, 359 F.2d 598 (2d Cir. 1966). It is apparent as pointed out that the Second Circuit in the Old Dutch Farms case did not focus on the matter as one of res judicata, and equally important, the decision was rendered before the Supreme Court instruction concerning res judicata in the Utah Constr. Co. case, supra. Equally so, the District Court cases relied upon by the defendant against res judicata determination on liability [Strip Clean Floor Refinish v. New York Dist. Coun. No. 9, 333 F. Supp. 385 (E.D.N.Y. 1971); Shell Chem. Co., Div. of Shell Oil Co. v. Teamsters L. U. No. 676, 353 F. Supp. 480 (D.C. N.J. 1973)]

are clearly distinguishable from the situation here. In the Strip Clear Floor Refinish opinion, it was pointed out that there were more parties, more factual issues in the court case than in the proceeding tried and determined administratively. Shell Chemical at p. 485 states "This is not to say the doctrine (res judicata) can never be applied in unfair labor practice decisions."

My assessment is different in regard to the application of the res judicata principle for the other plaintiff with a separate and independent claim. The Trial Examiner in his decision (p. 14) describes plaintiff D. E. Long, Inc. as a brother-sister corporation of Northeastern.* However, D. E. Long, Inc. was not one of the charging parties in the administrative proceeding and hearing or represented by an attorney listed in the appearances by the Examiner. The Trial Examiner in his decision (pp. 26-27) did expressly find the picketing of Long exceeded permissible bounds and was aimed at inducing strike action or refusal by its employees to perform services which was conduct violative of unfair labor practice provisions of the Act. But, in view of the noted Second Circuit reluctance in regard to summary judgment grant, it seems wiser to deny the motion for plaintiff D. E. Long, Inc. for summary judgment. There is the further consideration in regard to the D. E. Long, Inc. motion that the defendant claims provisions of a collective bargaining agreement bar the Section 303 suit by D. E. Long, Inc. until arbitration and grievance procedures are first resorted to. See Old Dutch Farms, Inc. v. Milk Drivers & Dairy Emp. Union, supra, 359 F.2d at 603. This issue may need development at trial for final and more intelligent determination. Contentions of a union that unfair labor practices are immunized in the enforcement of a contract, and other concerns in labor cases of the kind here are discussed in a recent Second Circuit opinion, Iodice v. Calabrese, 512 F.2d 383 (2d Cir. 1975).

The motion for summary judgment is granted and shall enter in favor of the plaintiff Northeastern Industrial Park, Inc. on the issue of liability alone with the issue of damages only to be tried in that claim. The motion for summary judgment in behalf of plaintiff D. E. Long, Inc. is denied for the reasons stated herein, leaving the issues of whether D. E. Long, Inc. was subject to unfair labor practice, barred by contract from instituting the suit, and money damages to be tried.

It is so Ordered.

Dated: October 1, 1975

Albany, New York

James T. Foley

UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

NORTHEASTERN INDUSTRIAL PARK, INC.
and D. E. LONG, INC.,

Plaintiffs,

-against- 73-CV-125

LOCAL 294, INTERNATIONAL BROTHERHOOD
OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN
AND HELPERS OF AMERICA,

Defendant.

APPEARANCES: OF COUNSEL:

FRANK J. WILLIAMS, JR., ESQ.
Attorney for Plaintiffs
11 North Pearl Street
Albany, New York 12207

POZEFSKY, TOCCI & POZEFSKY
Attorneys for Defendant
112 State Street
Albany, New York 12207

DOMINICK TOCCI
WILLIAM POZEFSKY

JAMES T. FOLEY, D.J.

MEMORANDUM-DECISION and ORDER

This is an action pursuant to Section 303 of the Labor Management Relations Act of 1947, 29 U.S.C. §187 [hereinafter "Act"] by plaintiffs Northeastern Industrial Park, Inc. [Northeastern] and D. E. Long, Inc. [Long] which seek to recover damages, including substantial attorneys fees, against defendant Local 294, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America [Local 294] for conduct by certain of its officers and members in launching and maintaining an alleged unfair labor practice, specifically illegal secondary boycott. Jurisdiction is invoked pursuant to Section 303 of the Labor-Management Relations Act of 1947 (29 U.S.C. §187) and 28 U.S.C. §§1331 and 1337.

A trial of the claims was conducted on October 21 and 22, 1975 on the presence of unfair labor practices and the liability

of Local 294 therefor to plaintiff Long; the other issues concerned the extent of compensatory damages to which plaintiffs Northeastern and Long were entitled. The trial transcript had to be awaited and the final briefing was submitted on August 2, 1976.

By Memorandum-Decision and Order dated October 1, 1975 [73-CV-125], I granted summary judgment favoring Northeastern on the issue of liability based upon res judicata principles -- holding in accord with the findings of the NLRB decision -- that Local 294 was responsible for a secondary boycott against Northeastern. See United States v. Utah Construction & Mining Co., 384 U.S. 394, 421-22 (1966), see also Strip Clean Floor Refinish v. New York Dist. Coun. No. 9, 333 F. Supp. 385 (E.D.N.Y. 1971). In my previous decision, it was thought wiser to deny Long's request for summary judgment on the issue of liability since it was not a named party in the prior NLRB proceeding and the damage claims would have to be tried in any event. I reserved the issue of Local 294's liability to Long for this action.

The secondary picketing activities were initiated by Local 294 on March 25, 1971. On April 9, 1971 [Good Friday], pursuant to an Order to Show Cause, an application for a temporary restraining order was heard in the familiar context of a 10(l) proceeding under the Labor Management Relations Act. I ordered a halt to the picketing from the bench on that date and issued a formal written Memorandum-Decision and Order signed on April 13, 1971.

Charges of unfair labor practices had been filed by plaintiff Northeastern and Rotterdam Ventures, Inc. on March 26 and April 11, 1971, and a hearing thereafter was held on those charges before an NLRB hearing officer on June 23 and 24, 1971.

The charges here, similar to those in the 10(l) proceeding for temporary injunction, alleged that Local 294 was engaged in secondary picketing or boycotting activities in violation of Section 8(b)(4)(i)

and (ii)(B) of the Labor Management Relations Act, 29 U.S.C. §158 (b)(4)(i) and (ii)(B). In a comprehensive decision dated November 1, 1971, the NLRB Trial Examiner found, as I did in the 10(l) proceeding, that Local 294 did engage in such unlawful secondary activities with respect to Northeastern inter alia. See Exhibit A. Plaintiff Long, not a party in the NLRB proceeding, seeks to prove in the instant case that the picketing by Local 294 was also a secondary boycott against it and seeks monetary damages for interference unlawfully with its business operations.

At the close of the NLRB proceeding a Cease and Desist Order was issued prohibiting Local 294 from any further picketing based on the Trial Examiner's very detailed Decision and his ultimate finding that:

> By the conduct set forth in Section III, supra, Respondent [Local 294] has induced and encouraged employees of Northeastern, Long . . . and their customers or suppliers to engage in a strike or refusal in the course of their employment to perform services, and has threatened, coerced and restrained Northeastern, Long . . . and has thereby engaged in unfair labor practices within the meaning of Section 8(b)(4)(i) and (ii)(B) of the Act.
>
> Exhibit A, p. 29, ¶3.

Given the substantial amounts of attorneys fees demanded by plaintiffs, $30,506.45, compared to only $5,154.00 in damages allegedly sustained by Long, the major question in this case is a question of law, to wit: whether attorneys fees are authorized in a suit under Section 303, particularly in light of the decisions of the Supreme Court in Alyeska Pipeline Service Co. v. Wilderness Society, 421 U.S. 240 (1975) and its only progeny in the context of allowance of attorney fees in a situation of this kind, Mead v. Retail Clerks Int. Ass'n, Etc., 523 F.2d 1371 (9th Cir. 1975). This question will be addressed first and it is an important one.

I. ATTORNEYS FEES

In my judgment, in light of the decision and reasoning of

Circuit Judge Browning in Mead and the application generally given to the principle of Alyeska as being restrictive in the grant of attorney fees [unless there is specified statutory authorization or other unique basis by our own Court of Appeals, Second Circuit] compel a ruling at this District Court level that attorneys fees are not recoverable in a Section 303 action (29 U.S.C. §187), either as an element of "damages" or as part of the "cost of the suit," the particular terminology set forth in the statute in regard to recovery.

Alyeska has clarified to a great degree the so-called "American Rule" by holding that each party must bear the cost of its own attorneys fees except where they are authorized in four limited situations: (1) a contract between the parties; (2) a specific statute; (3) a common fund theory or (4) cases involving willful disobedience of a court order or other such objectional conduct by a party. See Schiff v. Williams, 519 F.2d 257, 262 (5th Cir. 1975).

Plaintiffs contend that attorneys fees have been recognized as an element of damages in Section 303 suits insofar as they were incurred in a prior NLRB proceeding and to the extent they were incurred as efforts to halt the illegal secondary boycott. Indeed, this position has express support in three Circuits: the Fifth, Sixth and Eighth. See Mead v. Retail Clerk Int. Ass'n, Etc., supra, 523 F.2d at 1380 n.11; Construction & Gen. Lab. Loc. U. No. 438 v. Hardy Eng. & Const. Co., 354 F.2d 24, 27 (5th Cir. 1965); Aircraft & Engine Maintenance, Etc. v. I. E. Schilling Co., 340 F.2d 286 (5th Cir. 1965), cert. den., 382 U.S. 972 (1966); see also Bryant Air Con. & H. Co., Inc. v. Sheet Metal W. I. Ass'n, No. 541, 472 F.2d 969, 972, n.2 (8th Cir. 1973); cf. Local 20, Teamsters, Chauffeurs & Helpers Union v. Morton, 377 U.S. 252 (1964); Noranda Alum., Inc. v. United Bro. of C. & J., Etc., 528 F.2d 1304, 1310 (8th Cir. 1976); General Drivers & H. U., L. 554 v. Young & Hay Transp. Co. 522 F.2d 562, 568 (8th Cir. 1975); see generally Validity and Construction of

§303, 7 A.L.R. Fed. 767.

However, it is noteworthy that all of these decisions were prior to Alyeska which clearly forbids attorneys fees without statutory authorization and Mead which reasons persuasively to my mind that Section 303 contains no such statutory authorization expressly or by inference from its legislative history. Furthermore, Mead suggests that such a reading would also be inconsistent with the power of the NLRB to award attorneys fees in their proceedings under their established guidelines. Mead concludes in this regard that

> [i]t is for the Board, not the courts, to determine whether the conflicting interests are best resolved by imposing litigation costs upon the defeated party before the Board.
>
> Mead v. Retail Clerks Int. Ass'n, Etc., supra, 523 F.2d at 1381.

It should be noted also that in the NLRB proceedings, the petitioner therein does have the legal representation by the NLRB attorneys rendered without charge.

A survey of decisions by the Court of Appeals, Second Circuit, which apply Alyeska to other kinds of attorneys fee claims indicates, although without great elaboration, a strict adherence to the general rule that no attorneys fees are granted absent some express authorization. See Torres v. Sachs, _____F.2d_____, Slip Op. 4431, 4435 n.2 (June 25, 1976); Fort v. White, 530 F.2d 1113, 1117-1119 (2d Cir. 1976); Jones v. New York City Human Resources Admin., 528 F.2d 696, 699-700 (2d Cir. 1976), pet. for cert. filed 5/22/76, 45 U.S. Law Week 3056 (July 27, 1976); Lewis v. Texaco, Inc., 527 F.2d 921, 926-928 (2d Cir. 1975); Kirkland v. New York St. Dept. of Correctional Services, 520 F.2d 420, 430-431 (2d Cir. 1975), pet. for cert. filed 5/7/76, 45 U.S. Law Week 3055 (July 27, 1976). These cases and others emphasize the essential admonition of Alyeska: "to award counsel fees sparingly and only within established exceptions to the American rule against the award of fees." Foley v. Devaney, 528 F.2d 888, 891-892 (3d Cir. 1976). The request for attorneys fees as an element

of "damages" or "cost of the suit" is denied as a matter of law as not authorized by Section 303 of the Labor Management Relations Act. (29 U.S.C. §187). It is realized such ruling, of course, is a drastic one for the cause of the plaintiffs, but in my judgment compelled by the reasoning in Alyeska and Mead. If there is to be change in this regard in this type of labor suit where important national interests can be affected, such change should be considered and made, if found necessary and equitable by the Congress.

II. DAMAGES

The plaintiff Long has the burden of proving the "reasonable probability" of the existence and causal connection of their injuries and the defendant's wrongful acts in carrying out the secondary boycott. Mead v. Retail Clerks Int. Ass'n, Etc., supra, 523 F.2d at 1377; Foam & P. Div., Tenneco Chem. v. General Drivers, Etc., 520 F.2d 945, 948 (3d Cir. 1975).

Of course, compensatory damages may only be awarded for injuries attributable to the illegal secondary picketing, but not attributable solely to legal primary picketing. Local 20, Teamsters, Chauffeurs & Helpers Union v. Morton, supra; Old Dutch Farms, Inc. v. Milk Drivers & Dairy Emp. Union, 359 F.2d 598, 600-604 (2d Cir. 1966), cert. den. 385 U.S. 832 (1966). In terms of showing the extent of damages, a plaintiff need only make a "just and reasonable estimate" or "approximation" which does not have to "spell out in meticulous detail each item of damage." Iodice v. Calabrese, 512 F.2d 383, 389 (2d Cir. 1975), on remand, 409 F. Supp. 389 (S.D.N.Y. 1976); Noranda Alum., Inc. v. United Bro. of C. & J., Etc., supra, 528 F.2d at 1309.

I find that plaintiff Long did suffer money damages in its company business that was caused by defendant's secondary picketing activities, that constituted an unfair labor practice. This was a clear finding of the NLRB Trial Examiner and that fact was established by testimony in this trial despite defendant's technical argument

that Long was not a party to the original NLRB proceeding and therefore cannot rely on res judicata principles.

The history of this picketing by Local 294, which lasted from March 25 to April 9, 1971, is adequately detailed in the decision of the NLRB Trial Examiner. See Exhibit A. Only the factual matters which directly bear upon Long's damage claim will be discussed here with reference to the trial record.

D. E. Long, Inc. is an employer within the meaning of the Labor Management Relations Act, engaged in the interstate trucking business. 29 U.S.C. §152(5). Its operations consist of their offices, garage facilities and vehicles in four locations: Northeastern Industrial Park, Rotterdam Industrial Park, Market Square garage, and the South Mall complex of office buildings belonging to the State of New York. (R. 178, 266-67). The main facilities and offices of D. E. Long, Inc. are located at the Northeastern Industrial Park location. This park physically constitutes approximately 650 acres surrounded by a chain-link fence, having limited designated entrances for deliveries of goods and the convenience of patrons of the tenants of the park. (R. 166).

On March 25, 1971, Local 294 launched its picketing campaign against R. & R. Handling Company, another tenant of Northeastern. (R. 256-57). The picketing, however, was not commenced solely upon the leased property of R. & R. Handling, but rather at gate numbers one [the main gate] and gate number nine which involved the entire park and all tenants therein. (R. 257-59, 285). Gates one and nine are unique in that they are the only ones large enough to accommodate truck traffic; other gates to the park are either inactive or totally unfit for such use. Exhibit A, p. 5.

D. E. Long, Inc., Distribution Corporation and Northeastern Industrial Park, Inc. had common ownership of Northeastern Industrial Park. Long and Northeastern had common corporate officers and operations as e.g., bookkeeping and, in some instances, salary

disbursements. R. 165-166, 199-200, 221-223, 232, 256, 269. Exhibit A, p.6.

Many attempts were made by Northeastern and Long officers to have Local 294 limit their picketing activities to gate nine, which was expressly designated with signs specially erected by Northeastern for use by R. & R. Handling employees and customers exclusively, while gate one was designated for use by all other tenants. Within a short period on March 25, 1971, Local 294 ignored these efforts and their agreement not to picket gate one and resumed picketing both gates.

In my judgment, these activities at Northeastern Industrial Park by Local 294 constituted secondary picketing in violation of the Act and caused damage to Long in terms of a monetary loss due to business inactivity, and the idling of its equipment. Any residual doubt of this evaporates as of March 29, 1971, when Local 294 expressly began picketing Long, i.e., their pickets were positioned at both gates one and nine with signs also naming Long as the subject of their grievances and target of the picketing. R. 176-77; Exhibit A, pp. 28-29. Subsequently, Local 294 escalated its actions by also picketing Long's facilities at Rotterdam Industrial Park, the Market Square garage and the South Mall. Exhibit A, pp. 25-26; R. 295. Despite defendant's claim that activities against Long commenced March 29 instead of March 25, 1971, I find that there were no physical differences discernible with respect to the picketing at either time since both main gates were effectively rendered inoperative for Long's business use. The fact that the picketing was expressly against Long as of March 29, by use of picket signs, does not alter its secondary nature as to Long as of March 25th when it was purportedly only directed against R. & R. Handling Company.

There is ample evidence to conclude, and I so find, that Local 294 did engage in unlawful secondary picketing, an unfair labor practice, as of March 25, 1971, against D. E. Long, Inc., in violation

of Section 8(b)(4)(i) and (ii)(B) of the Labor Management Relations Act.

There are various formulae approved by federal courts to calculate Section 303 damages due to secondary boycott and picketing. The plaintiff may show monetary damages occurred from "lost business opportunities" due to an inability to conduct or carry on its affairs, Rodgers v. Local No. 8, Am. Fed. of Mus. of U.S. & Can., 403 F. Supp. 870 (E.D. Wisc. 1975); or, the actual "profit (or loss) achieved on the day[s] of the work stoppage", Foam & P. Div., Tenneco Chem. v. General Drivers, Etc., supra, 520 F.2d at 950; or, the so-called "yardstick test" i.e., "the study of profits of business operations which are closely comparable to the plaintiff's . . . [with] allowances . . . made for differences", Iodice v. Calabrese, supra, 409 F. Supp. at 391; or "an equitable award can be made by comparing profitability during the period of stability . . . with profitability during the period of ascertainable loss . . .". Id., at 392; see also Abbott v. Local Union No. 142 of United Ass'n of J. & A., 429 F.2d 786, 789-90 (5th Cir. 1970). The last mode, and that expressly adopted by plaintiff Long in this action [R. 193-194] is not for loss of present or future business and profits per se, but rather for mere recovery of overhead and actual expenses incurred while the business and its equipment sat idle or at a minimum threshold level of activity.

> Overhead expenses are the fixed costs of operation which do not fluctuate directly with the productive business of the company. When production is reduced these costs continue and are not offset by income derived from or attributable to productive labor. Thus, overhead expenses are recoverable where the productive labor or output of the employer is reduced below its normal level as a result of the unlawful activity of the union. * * * This recovery of overhead costs is limited to those costs not compensated for by other elements of damages or income derived from the normal course of business.
>
> Sheet Metal Wkrs. Int. Ass'n, Loc. 223 v. Atlas Sheet Metal Co., supra, 384 F.2d at 109-110.

To the overhead expenses may be added all activities undertaken to end the unlawful secondary picketing, such as, part-time or full-time employees who devote portions of their time to end the strike, telephone and travel expenses, as well as expenditures for signs to control or limit the impact of the unlawful secondary activities. Abbott v. Local Union No. 142 of United Ass'n of J. & A., supra, 429 F.2d at 788-89.

D. E. Long, Inc. had a gross revenue of fifty thousand dollars in 1971. R. 169. Long's total overhead expenses, incurred for the prior eleven months of operation in 1971, was $122,915.00 which when apportioned for the two-week duration of the strike [15 days total, minus April 9 which was the legal holiday of Good Friday, when no work would have been done] before being halted by order of this Court, is actually somewhat greater than the amount plaintiff has demanded in the sum $5,154.00. In my judgment, this figure of $5,154.00 is not unreasonable, nor speculative, but is justified and supported by the evidence presented at the trial of this action on the damages issue.

The credible testimony indicates that Long's trucking operation had, for all practical and normal business purposes, ceased for the period of Local 294's actions from March 25 to April 9, 1971. R. 178, 225, 265-267, 287-295. Also, although some employees did work for Long during this period, I find they were mostly managerial and administrative and devoted the majority of their time either to ending the strike or maintaining the minimal level of business activity, and generally staffing the office as support to the officers who were trying to end the picketing. R. 165, 171-183 212, 215, 221, 229-300.

The defendant's attack upon the damage formula, which employs this overhead apportionment as its metric, is basically that some individual figures of overhead expenses have not been discounted or offset based upon whatever minimal benefit or income was received

by Long from its employees, equipment, etc., used during the picketing period. However, as previously stated, the damage figure under settled case law may be an approximation which falls short of mathematical certainty. Long, as a profitably run company, could have been expected to realize an income in excess of its overhead during this time. And, even if much of defendant's challenges were conceded, it would not greatly change the amount requested, which seems to be less than two full weeks overhead based on the actual figures given at the trial and less than what might be claimed under a more complex formula.

Thus, the amount of $5,154.00 as overhead damages is not excessive, particularly when higher damages possibly existed but might be difficult to prove. Consideration must also be given to the turmoil caused by the picketing; the disjunctive nature of Long's business operated in four separate and distant locations; and the difficulty in keeping track of the actual and precise use of overhead monies and the minimum income during this period of relative dormancy. While this method of overhead might not be exact or precise, it is above the level of "speculation and guess" which even by itself might justify some nominal damages where a strong showing is made for the existence of damages in some magnitude. See Iodice v. Calabrese, supra, 409 F. Supp. at 393.

The burden of proofing every item of offsetting income would have been difficult or impossible in the context of a relatively small company such as Long with its very limited record keeping. The proof presented is sufficient to make a reasonable and fair approximation.

Defendant presents two other challenges which I find do not alter this judgment. I do not agree that Long and Local 294 had an implied labor contract which necessitated that Long subject itself to prior arbitration before commencing the instant Section 303 action and which agreement would also characterize Local 294's

picketing as "primary" instead of "secondary." Further, defendant's contention that expenses for employees who might have worked on non-picketing activities or might have been unable to work altogether, e.g., the truck drivers, should be deducted is circuitous. It would have the undesirable effect of rewarding the union's efficiency in unlawfully slowing down or halting a business operation by thus reducing the awardable compensatory overhead damages, when the business saves nothing, but, in fact, must merely postpone the accomplishment of those tasks that would have been done but for the secondary picketing. See Old Dutch Farms, Inc. v. Milk Drivers & Dairy Emp. Union, supra, 359 F.2d at 601; compare National Labor Relations Board v. A. Lasapcnara & Sons, Inc., _____F.2d_____, Slip Op. 5497, 5504 (2d Cir. September 13, 1976).

My findings of fact are contained in this decision, the major one in regard to plaintiff D. E. Long, Inc., being that it is entitled to recover $5,154.00 in unproductive overhead costs that were caused by unfair labor practices by the defendant. My conclusions of law are that D. E. Long, Inc. is entitled to that judgment against the defendant, and the request in the complaint of Northeastern Industrial Park, Inc. for judgment against the defendant for damages in the sum of $30,506.45 is denied as a matter of law and the complaint dismissed in that respect. See Rule 52(a) of the F.R.Civ. Proc.

Judgment shall enter for compensatory damages in the amount of $5,154.00 in favor of plaintiff D. E. Long, Inc. The judgment shall also enter denying the request of plaintiff Northeastern Industrial Park, Inc. for a judgment of $30,506.45 against the defendant for legal services incurred in the injunction proceedings and NLRB proceedings, and enter in favor of the defendant as a matter of law dismissing that claim. In accordance with the practice of this Court, the exhibits shall be returned by the Clerk to the

attorneys who offered them at the trial.

It is so Ordered.

Dated: September 30, 1976

Albany, New York

UNITED STATES DISTRICT JUDGE

EXHIBIT 1

Telephone Calls

CLIENT Northeastern Industrial Park Inc.

SUBJECT Labor: Local 294, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America: National Labor Relations Board Cases 3-CC-605 & 3-CC-606 and Seeler etc. v. Local 294 etc., United States District Court for the Northern District of New York Case 71-CV-164

DATE	SERVICE	TIME							
		1		2		3		4	
1971									
April									
1	from Gerard E. McKenna		2						
2	to Gerard E. McKenna		1						
5	from Frank Williams								1
	from Harry W. Livingston		4						
	to Frank Williams		1						
6	from Frank Williams[2]		5						
	to Gerard E. McKenna, Frank Williams, Sol Rubenstein and Thomas Flynn		9						
7	from Frank Williams				1				
	to Frank Williams		1						
8	from Harry W. Livingston								1
9	from Walter Shaw						1		
	from Anthony T. DeLorenzo and Walter Shaw								1
	to Walter Shaw [2]		2						
11	from Harry W. Livingston		1						
12	from secretary vice Gerard E. McKenna								1
	to Gerard E. McKenna								1
	to Anthony T. DeLorenzo, Herbert Grimshaw and Gerard E. McKenna		4						
14	from Harry W. Livingston and Frank Williams								1
	to Arnold T. Olena, Thomas J. Sheridan, Harry W. Livingston, Gerard E. McKenna, Herbert J. Grimshaw, Frank Williams [2]								
	and Peter Silletto	1	2						
22	from Frank Williams								1
28	from Frank Williams								1
29	from Gerard E. McKenna								1
	to Gerard E. McKenna		6						
May									
3	from Frank Williams		1						
5	to Thomas J. Sheridan		1						
10	from Thomas J. Sheridan		1						
11	from Thomas J. Sheridan								1
12	to Gerard E. McKenna [4], Thomas J. Sheridan [2] and Frank Williams		5						
17	from Pat Paley vice Thomas J. Sheridan								1
	to Gerard E. McKenna [2]		2						
18	to Herbert J. Grimshaw		2						
19	to Pat Paley vice Thomas J. Sheridan								1
June									
7	from Gerard E. McKenna and Herbert J. Grimshaw		1						
	to Gerard E. McKenna		1						
16	from Thomas J. Sheridan	1	1						
	to Thomas J. Sheridan, Martin Miller and Robert Jordan		2						
22	to Gerard E. McKenna and Herbert J. Grimshaw								1
	to Gerard E. McKenna		1						
24	from secretary vice Herbert J. Grimshaw								1
25	from Thomas J. Sheridan [2]		1						
	to Thomas J. Sheridan [2]		3						
	TOTALS	2	0	1		1	1	4	

EXHIBIT 1

PAGE 2

Telephone Calls

CLIENT Northeastern Industrial Park Inc.

SUBJECT Labor: Teamsters Local 294: N.L.R.B. Cases 3-CC-605 & 3-CC-606 and Seeler etc. v. Local 294 etc., U.S.D.C. N.D. N.Y. Case 71-CV-164

DATE	SERVICE	TIME							
		1		2		3		4	
1971									
July	TOTALS FORWARDED	8	0	1		1		1	4
19	to Lawrence Pedently			1					
20	to Thomas J. Sheridan			1					
21	from Frank J. Williams [2]			1					
	to Frank J. Williams, Gerard E. McKenna and Daniel G. Collins			1					
			2						
22	to Dennis Young [2]			2					
23	to Daniel G. Collins			1					
28	from John Sauter			1					
	to Harry Pozefsky, Thomas J. Sheridan and Arthur Neff			2					
29	to Charles High			1					
30	from General Services Administration								1
	to Melvin Weinberg and Daniel G. Collins			2					
August									
5	to Charles High			5					
16	from Charles Reilly and Charles High			2					
	to Charles Reilly, Henry Silling			1					
18	from Charles High [2]		2	1					
19	to George E. Bokat		1						
20	from Charles High [2]			1					
	to Charles High			1					
23	to George E. Bokat		1						
November									
3	from Frank J. Williams		1						
	to Gerard E. McKenna and Frank J. Williams		3						
4	from Frank J. Williams								1
	to Frank J. Williams		1						
9	from John E. Jay and Gerard E. McKenna		1						
	to Gerard E. McKenna and John E. Jay								1
24	to John E. Jay		2						
29	to Robert Volger		2						
December									
3	to George Leet and Harry Pozefsky		1						
7	from General Services Administration and Frank J. Williams								1
8	to George Leet and Gerard E. McKenna		3						
16	from Charles High [2]		1						1
22	from Peter Panken								1
	to Peter Panken		2						
27	to John E. Jay		5						
1972									
January									
3	from George Decker								1
	to Western Union, George Decker (Western Union) [2]		3						
5	from General Services Administration								1
	to John E. Jay		3						
11	to George Leet		2						
31	to Gerard E. McKenna		2						
	TOTALS	11	3	2	5		1	2	2

EXHIBIT 1

Telephone Calls

CLIENT Northeastern Industrial Park Inc.

SUBJECT Labor: Teamsters Local 294: N.L.R.B. Cases 3-CC-605 & 3-CC-606 and Seeler etc. v. Local 294 etc., U.S.D.C.N.D. N.Y. Case 71-CV-104

DATE	SERVICE	TIME							
		1		2		3	4		
1972									
April	TOTALS FORWARDED	11	8	2	5	1	2	2	
17	to John E. Jay		4						
19	from Gerard E. McKenna [2]		2						
	to Gerard E. McKenna		1						
21	from Frank J. Williams							1	
May									
22	from Gerard E. McKenna							1	
26	from Frank J. Williams					1			
	to Gerard E. McKenna		2						
31	from Gerard E. McKenna							1	
June									
7	to Martin Miller							1	
14	to Martin Miller							1	
August									
17	to Gerard E. McKenna		1						
September									
19	to Gerard E. McKenna		1						
20	to Gerard E. McKenna		1						
25	to Gerard E. McKenna		1						
26	to Gerard E. McKenna		1						
October									
27	to Gerard E. McKenna		1						
30	from Gerard E. McKenna		2						
November									
3	to Robert Ballentine and Gerard E. McKenna		1						
16	to Gerard E. McKenna		1						
17	from Gerard E. McKenna							1	
	to Gerard E. McKenna [6]		8						
21	to Gerard E. McKenna		1						
29	to Robert Volger		2						
December									
9	from Gerard E. McKenna		2						
	to Robert Ballentine		1						
17	from Charles High		1						
20	to George Leet		1						
21	from General Services Administration		1						
29	from Gerard E. McKenna							1	
1973									
January									
3	to Gerard E. McKenna	1	1						
5	from Gerard E. McKenna							1	
16	from Robert Ballentine							1	
17	to Robert Ballentine		2						
26	from Robert Ballentine [2]							1	
	to Robert Ballentine		1						
29	from Robert Ballentine							1	
	TOTALS	10	8	2	5		2	3	3

EXHIBIT 1 A77

Telephone Calls

PAGE 4

CLIENT Northeastern Industrial Park Inc.

SUBJECT Labor: Teamsters Local 294: N.L.R.B. Cases 3-CC-605 & 3-CC-606 and Seeler etc. v. Local 294 etc., U.S.D.C.N.D. N.Y. Case 71-CV-164

DATE	SERVICE	TIME							
		1		2		3		4	
1973	TOTALS FORWARDED	16	8	2	5	2		3	3
February									
7	to Robert Ballentine, Dennis Mulligan and Dave Feldman		4						
	from Robert Ballentine and Dave Feldman		1						
8	to Dave Feldman		1						
13	to Dave Feldman, Robert Ballentine and David Hume		4						
14	from Robert Ballentine								1
19	to Robert Ballentine		1						
March									
15	from Frank J. Williams								1
26	from Frank J. Williams								1
27	from Frank J. Williams		2						
	to Frank J. Williams		1						
November									
19	from Robert Ballentine [2]		1						1
December									
10	from Robert Ballentine								1
26	from Robert Ballentine		1						
27	from Robert Ballentine								1
	TOTALS	18	4	2	5	2		3	3

[redacted]

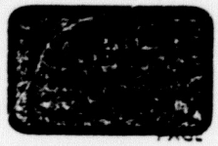
Correspondence

CLIENT Northeastern Industrial Park Inc.

SUBJECT Labor: Local 294, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America: National Labor Relations Board Cases 3-CC-605 & 3-CC-606 and Seeler etc. v. Local 294 etc., United States District Court for the Northern District of New York Case 71-CV-164

DATE	SERVICE	TIME 1	2	3	4
1971 April 2	March 26 letter from NLRB Region Three director Thomas W. Seeler to Herbert J. Grimshaw and March 26 unfair-labor-practice charge by Northeastern Industrial Park [NEIP] against Local 294, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, in NLRB case 3-CC-605		2		
5	April 5 letter from Gerard E. McKenna, enclosing corporate structure diagram; letters to NLRB field attorney Thomas J. Sheridan, NEIP attorney Frank J. Williams Jr., and Mr. McKenna, re appearance for NEIP in case 3-CC-605 and Seeler etc. v. Local 294 etc., United States District Court for the Northern District of New York civil action 71-CV-164		8		
6	letter to Mr. Sheridan transmitting statements [6] by NEIP personnel Gerard E. McKenna, Herbert J. Grimshaw, Anthony T. DeLorenzo and Ernest K. McMaster		2		
7	letters to Mr. Sheridan, Mr. Williams and Mr. McKenna transmitting typescripts of witness statements [6]		3		
12	copy, from Mr. McKenna, of April 9 letter to D. E. Long [Long] employees re anti-picketing injunction and return to work, with certified-mail receipts re same; April 12 letters from Mr. Grimshaw [2] and Mr. DeLorenzo re picketing at NEIP; pursuing same	1	4		
14	April 10 memorandum and enclosures [2] from Mr. McKenna re delivery interference at NEIP		1		
23	memorandum re counsel appearances; letters to Mr. Williams and Mr. McKenna re NLRB issuance of complaint in cases 3-CC-605 & 3-CC-606 and preparation for May 18 hearing		3		
May 12	copy, from Harry Pozefsky [attorney, Local 294], of letter to NLRB Region 3 director Thomas W. Seeler requesting postponement of hearing in cases 3-CC-605 & 3-CC-606		1		
17	telephone memorandum re postponement of hearing in cases 3-CC-605 & 3-CC-606 to June 28		1		
	TOTALS	3	5		

EXHIBIT 2

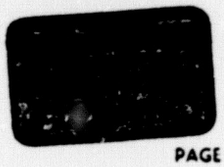


CLIENT Northeastern Industrial Park Inc.

SUBJECT Labor: Teamsters Local 294: N. L. R. B. Cases 3-CC-605 & 3-CC-606 and Seeler etc. v. Local 294 etc., U. S. D. C. N. D. N. Y. Case 71-CV-164

DATE	SERVICE	TIME 1		2	3	4
1971 May	TOTALS FORWARDED	3	5			
18	letters to Mr. McKenna and Mr. Williams re hearing postponement		2			
June						
25	letter to Alan H. Segal re exhibits		2			
28	June 25 letter from Thomas J. Sheridan transmitting photographs		2			
July						
2	letters to Mr. Williams and Mr. McKenna transmitting hearing exhibits and other items		6			
6	hearing transcript in cases 3-CC-605 & 3-CC-606; reviewing same for error	5	7			
7	memorandum to L. W. K. re preparation of law memorandum as basis for brief to trial examiner	1	8			
9	letter to Mr. McKenna transmitting copy of hearing transcript		1			
16	letters to Harry Pozefsky, Thomas J. Sheridan and Arthur Leff re extension of time for briefs in cases 3-CC-605 & 3-CC-606; memorandum re same				3	
	telegram from Mr. Leff confirming extension of time for briefs		1			
28	memorandum re further extension of time for briefs; telegram to Arthur Leff re same; letters to Mr. Leff, John E. Sauter and Harry Pozefsky re same				4	
August						
2	telegram from chief trial examiner George Bokat confirming extension of time for briefs		1			
23	August 20 letter, with respondent's brief, from Harry Pozefsky; letters to trial examiner Harry H. Kuskis, Mr. Pozefsky, Thomas J. Sheridan, Mr. Williams and Mr. McKenna, filing, serving or transmitting, as indicated, NEIP brief to trial examiner in cases 3-CC-605 & 3-CC-606	3	9			
27	card from George Bokat acknowledging receipt of NEIP brief to trial examiner		1			
	TOTALS	16	5		7	

EXHIBIT 2

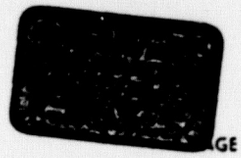


CLIENT Northeastern Industrial Park Inc.

SUBJECT Labor: Teamsters Local 294: N. L. R. B. Cases 3-CC-605 & 3-CC-606 and Seeler etc. v. Local 294 etc., U. S. D. C. N. D. N. Y. Case 71-CV-164

DATE	SERVICE	TIME							
		1		2		3		4	
1971 November	TOTALS FORWARDED	16	5		7				
3	decision in cases 3-CC-605 & 3-CC-606 from trial examiner Kuskis; letters to Mr. McKenna and Mr. Williams transmitting copies of same		3						
5	letters to Mr. McKenna and Mr. Williams recommending that NEIP except to trial examiner's proposed remedy in cases 3-CC-605 & 3-CC-606		2						
11	November 11 letter from Mr. McKenna authorizing filing of exceptions to trial examiner's recommended remedy		1						
22	copy, from Harry Pozefsky, of his November 19 letter to NLRB chief trial examiner, with copies of (1) respondent's exceptions to trial examiner's decision and (2) respondent's brief to N. L. R. B. supporting same		3						
December									
3	telegrams to Harry Pozefsky, Thomas J. Sheridan and John Truesdale re extension to January 14 of NEIP time to file answer brief in cases 3-CC-605 & 3-CC-606; letters to Mr. McKenna and Mr. Williams re same and respondent's exceptions and brief	1	1						
7	telegram from NLRB associate executive secretary George Leet extending to December 23 NEIP time to file answer brief		1						
8	confirmation telegram from Mr. Leet		1						
20	telegrams to George Leet, Harry Pozefsky and Thomas J. Sheridan re further extension of time for NEIP answer brief		2						
23	telegram from NLRB associate executive secretary Robert Volger extending to January 6 NEIP time to file answer brief		1						
1972 January									
3	telegrams to John Truesdale, Harry Pozefsky and Thomas J. Sheridan re further extension of time for NEIP answer brief in cases 3-CC-605 & 3-CC-606		2						
6	telegram from NLRB associate executive secretary George Leet extending to January 11 NEIP time to file answer brief		1						
	TOTALS	16	3		7				

EXHIBIT 2



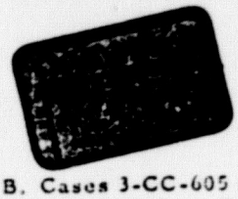
PAGE 4

CLIENT Northeastern Industrial Park Inc.

SUBJECT Labor: Teamsters Local 294: N. L. R. B. Cases 3-CC-605 & 3-CC-606 and Seeler etc. v. Local 294 etc., U. S. D. C. N. D. N. Y. Case 71-CV-164

DATE	SERVICE	TIME 1		2		3		4	
1972 January	TOTALS FORWARDED	19	3		7				
10	letters to Ogden W. Fields, Harry Pozefsky, Thomas J. Sheridan, Mr. McKenna and Mr. Williams, filing, transmitting or serving, as indicated, NEIP cross-exceptions to trial examiner's decision and brief supporting same and answering respondent exceptions and brief in cases 3-CC-605 & 3-CC-606	2	5						
11	letter to Ogden W. Fields correcting collation error in NEIP brief		3						
14	card from George Leet acknowledging NLRB receipt of NEIP cross-exceptions and brief		1						
19	card from George Leet acknowledging NLRB receipt of NEIP collation-correction		1						
April									
18	April 14 decision and order from N. L. R. B.; letters to Mr. McKenna and Mr. Williams re same	1	2						
27	April 24 letter from Mr. McKenna re N. L. R. B. decision and order and preparation of letter to NEIP tenants re same; letter to Mr. McKenna re same		3						
May									
26	copy, from Harry Pozefsky, of his May 25 letter to N. L. R. B. and reconsideration motion referred to		2						
June									
8	copy, from N. L. R. B. associate executive secretary Howard F. LeBaron, of his June 6 letter to Harry Pozefsky, rejecting reconsideration motion as not timely		1						
July									
17	letters to Thomas W. Seeler, Mr. Williams and Mr. McKenna re state of Local 294 compliance with Board order, etc.	1	0						
24	July 21 letter from Mr. Seeler re recommendation for enforcement proceedings in cases 3-CC-605 & 3-CC-606		1						
	TOTALS	24	7		7				

EXHIBIT 2



CLIENT Northeastern Industrial Park Inc.

SUBJECT Labor: Teamsters Local 294: N. L. R. B. Cases 3-CC-605 & 3-CC-606 and Seeler etc. v. Local 294 etc., U. S. D. C. N. D. N. Y. Case 71-CV-164

DATE	SERVICE	TIME							
		1		2		3		4	
1972 August	TOTALS FORWARDED	24	7		7				
31	letter to Mr. McKenna & Mr. Williams re status of proceedings		3						
September									
27	September 25 letter from Thomas J. Sheridan, with copy of order dissolving temporary injunction in case 71-CV-164 and terminating proceedings in cases 3-CC-605 & 3-CC-606		5						
29	letters to Thomas W. Seeler and to Mr. McKenna & Mr. Williams re status of all proceedings		5						
October									
10	October 5 letter from Thomas W. Seeler re status of proceedings		2						
16	letters to Thomas W. Seeler and to Mr. McKenna & Mr. Williams re information on Local 294 compliance with N. L. R. B. order		5						
1973 January									
5	letters to Thomas W. Seeler and Mr. McKenna re status of Local 294 compliance with N. L. R. B. order		5						
12	January 10 letter from N. L. R. B. Region 3 compliance officer James J. Palermo, with copy of compliance motion posted by Local 294, re status of Local 29 compliance with N. L. R. B. order		3						
18	letter to Mr. McKenna re James J. Palermo January 10 letter and notice-copy etc.		8						
March									
29	March 27 letter from Thomas W. Seeler closing cases 3-CC-605 & 3-CC-606 conditioned on continued compliance by Local 294 with N. L. R. B. order		3						
May									
27	letter to Mr. McKenna & Mr. Williams closing file		1		5				
	TOTALS		30		6		7		

EXHIBIT 3

[redacted]

Correspondence

CLIENT Northeastern Industrial Park Inc.

SUBJECT Labor: Local 294, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America: Seeler etc. v. Local 294 etc., United States District Court for the Northern District of New York Case 71-CV-104

DATE	SERVICE	TIME 1		2		3		4	
1971 April									
8	April 7 letter from National Labor Relations Board attorney Thomas J. Sheridan, with memorandum to United States District Court of General Counsel's points and authorities		3						
9	National Master Freight Agreement from Charles Lighthart		1						
12	letters to Northeastern Industrial Park Inc. [NEIP] attorney Frank J. Williams Jr. and NEIP executive vice president Gerard E. McKenna, transmitting copy of respondent's answer		2						
13	copy, from Harry Pozefsky, of April 12 letter from Mr. Pozefsky to United States District Judge James T. Foley, in the nature of a post-hearing brief for Local 294, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America; letters to Honorable James T. Foley, Harry Pozefsky, Thomas J. Sheridan, Mr. McKenna and Mr. Williams, filing, serving or transmitting, as indicated, NEIP post-hearing memorandum supporting NLRB injunction petition	3	7						
14	April 13 letter from Thomas J. Sheridan, with copies of NLRB supplemental memorandum of points and authorities, proposed findings of fact and conclusions of law, and proposed order granting temporary injunction: decision by Judge James T. Foley; letters to Mr. Williams, Mr. McKenna, and NEIP counsel Arnold T. Olena re same	1	0						
15	April 15 letter from Thomas J. Sheridan, with copies of order granting temporary injunction, and findings of fact and conclusions of law, as signed by Judge James T. Foley; letters to Mr. Williams, Mr. McKenna and Mr. Olena re same		7						
1972 September									
27	September 25 letter from Thomas J. Sheridan, with order by Judge James T. Foley dissolving temporary injunction		2						
29	letter to Mr. McKenna & Mr. Williams re termination of proceeding		2						
	TOTALS	5	4						

EXHIBIT 4

Travel, Conferences, Hearing Preparation & Hearings

CLIENT Northeastern Industrial Park Inc.

SUBJECT Labor: Local 294, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America; National Labor Relations Board Cases 3-CC-605 & 3-CC-606 and Seeler etc. v. Local 294 etc., United States District Court for the Northern District of New York Case 71-CV-164

DATE	SERVICE	TIME							
1971		1		2		3		4	
April									
2	conference with Northeastern Industrial Park Inc. [NEIP] executive vice-president Gerard E. McKenna and vice-president Herbert J. Grimshaw re Local 294, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, secondary-boycott activity, posture of NEIP unfair-labor-practice charges, preparation for injunction hearing, problems with tenants, carriers, etc.; establishing files; miscellaneous preparatory work	7	3						
3	[at NEIP:] conference with NEIP president Francesco Galesi, Mr. McKenna, Mr. Grimshaw, NEIP attorney Frank J. Williams Jr., and others re history of problems with Local 294; surveying NEIP premises, entrances, railroad spurs, etc.	8	9						
5	further conference with Mr. McKenna, Mr. Grimshaw and Mr. Williams re general situation	4	2						
6	reviewing statements to NLRB of Mr. McKenna, Mr. Grimshaw, and NEIP personnel Anthony T. DeLorenzo [3] and Ernest McMaster; interviewing same; reviewing testimony, etc., in preparation for April 9 injunction hearing in Seeler etc. v. Local 294, United States District Court for Northern District of New York, case 71-CV-164; general work re same	14	8						
7	further conference with Mr. McKenna and Mr. Grimshaw preparing for injunction hearing; reviewing labor relations history, service interruptions, etc.	12	7						
8	final preparation for injunction hearing; screening testimony for injunction hearing and substantive unfair-labor-practice hearing; etc.	4	3						
9	conference with Mr. McKenna, Mr. Grimshaw, Mr. DeLorenzo, Mr. McMaster and Mr. Williams; [at U.S.D.C.:] hearing before District Judge James T. Foley on temporary injunction; further conference with Mr. McKenna, Mr. Grimshaw and Mr. Williams re post-hearing steps, etc.	11	5						
13	[at N.L.R.B.:] conference with Thomas E. Sheridan re preparation of post-hearing briefs to District Judge James T. Foley on N.L.R.B. injunction application	4	3						
	TOTALS	63	0						

EXHIBIT 4

Travel, Conferences, Hearing Preparation & Hearings

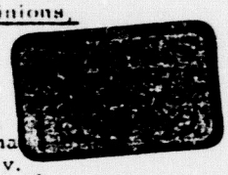
CLIENT Northeastern Industrial Park Inc.

SUBJECT Labor: Teamsters Local 294: N. L. R. B. Cases 3-CC-605 & 3-CC-606 and Seeler etc. v. Local 294 etc., U. S. D. C. N. D. N. Y. Case 71-CV-164

DATE	SERVICE	TIME 1		2		3		4	
1971 June	TOTALS FORWARDED	68	0						
16	conference with Mr. McKenna and Mr. Grimshaw re preparation for June 23 substantive hearing on unfair-labor-practice charges	4	0						
17	[at NEIP:] conference with Mr. McKenna, Mr. Grimshaw, Mr. DeLorenzo and Ward Clark re further hearing preparation	9	6						
22	[at NEIP:] further hearing preparation, with Mr. McKenna, Mr. Grimshaw, Mr. DeLorenzo and Mr. Clark	6	5						
23	conference with Mr. McKenna, Mr. Grimshaw and Mr. Clark; [at NLRB:] hearing in National Labor Relations Board cases 3-CC-605 & 3-CC-606; post-hearing conference with Mr. Williams, Mr. McKenna and Mr. Grimshaw	10	7						
24	[at NLRB:] further hearing in N. L. R. B. cases 3-CC-605 & 3-CC-606; post-hearing conference with Mr. Williams and Mr. McKenna	8	5						
	TOTALS	107	3						

EXHIBIT 5

General Work Preparing or Reviewing Law Memoranda, Opinions, Pleadings, Briefs, Agreements and Other Material



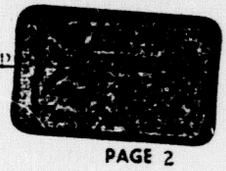
CLIENT Northeastern Industrial Park Inc.

SUBJECT Labor: Local 294, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America: National Labor Relations Board Cases 3-CC-605 & 3-CC-606 and Seeler etc. v. Local 294 etc., United States District Court for the Northern District of New York Case 71-CV-164

DATE	SERVICE	TIME							
		1		2		3		4	
1971 April									
2	reviewing Northeastern Industrial Park Inc. [NEIP] March 26 and April 1 unfair-labor-practice charges against Local 294, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, in National Labor Relations Board Cases 3-CC-605 & 3-CC-606; reviewing NLRB petition for temporary injunction in Seeler etc. v. Local 294 etc., United States District Court for Northern District of New York case 71-CV-164, and District Judge James T. Foley April 2 order-to-show cause on same; preliminary check of law re same	6	4						
9	reviewing Local 294 answer in 71-CV-164		3						
12	preparing NEIP post-hearing memorandum to Court in 71-CV-164; law research, drafting and revision	7	1						
13	completing, filing and serving NEIP post-hearing memorandum in 71-CV-164; reviewing General Counsel's proposed findings of fact and conclusions of law and proposed temporary injunction; reviewing respondent Local 294's letter-brief opposing injunction	3	9						
14	reviewing District Judge James T. Foley's April 13 decision granting temporary injunction		8						
15	reviewing District Judge Foley's April 13 order on decision; at Court re same	1	8						
22	reviewing NLRB General Counsel's April 21 complaint in cases 3-CC-605 & 3-CC-606, consolidation order, and hearing notice in same	1	2						
30	reviewing Local 294 answer to complaint in cases 3-CC-605 & 3-CC-606		5						
May									
18	NLRB May 17 order rescheduling hearing from May 18 to June 23		1						
June									
17	law research re testimonial problems	6	3						
18	further law research re testimonial problems, carrier access to industrial park, etc.	7	5						
	TOTALS	35	8						

EXHIBIT 5

General Work Preparing or Reviewing Law Memoranda, Opi
Pleadings, Briefs, Agreements and Other Materials



CLIENT Northeastern Industrial Park Inc.

SUBJECT Labor: Teamsters Local 294, N. L. R. B. Cases 3-CC-605 & 3-CC-606 and Seeler etc. v. Local 294 etc., U. S. D. C. N. D. N. Y. Case 71-CV-164

DATE	SERVICE	TIME							
1971		1		2		3		4	
July	TOTALS FORWARDED	35	9						
25	law research for memorandum on hearing issues in cases 3-CC-605 & 3-CC-606			8	0				
26	further work on law memorandum re hearing issues in cases 3-CC-605 & 3-CC-606			10	5				
27	further work on law memorandum re hearing issues in cases 3-CC-605 & 3-CC-606			9	0				
26	first draft (partial) of law memorandum on hearing-issues in cases 3-CC-605 & 3-CC-606			12	5				
27	completing first draft of law memorandum on hearing-issues in cases 3-CC-605 & 3-CC-606			5	8				
29	revising and completing law memorandum on hearing-issues in cases 3-CC-605 & 3-CC-606			6	3				
August									
10-18	law research re post-hearing memorandum for NEIP to trial examiner in cases 3-CC-605 & 3-CC-606; preparing outline of memorandum; drafting same; revising first draft; revising second draft; proofreading, etc.	65	0						
23	reviewing General Counsel's post-hearing memorandum to trial examiner; checking same for accuracy of authority citation etc.; reviewing Local 294 post-hearing memorandum to trial examiner; checking same re accuracy of authority citation etc.	8	7						
November									
3	reviewing trial examiner's November 1 decision and recommended remedy in cases 3-CC-605 & 3-CC-606; preliminary examination of cases on broad remedial order	3	5						
4	further examination of cases on broad remedial order	2	7						
22	reviewing (1) Local 294 exceptions to trial examiner's decision and (2) brief to NLRB in support of same	1	5						
23	further review of Local 294 exceptions and briefs to NLRB in cases 3-CC-605 & 3-CC-606	8	3						
	TOTALS	125	6	52	1				

EXHIBIT 5

General Work Preparing or Reviewing Law Memoranda, Opinion[redacted]
Pleadings, Briefs, Agreements and Other Materials

CLIENT Northeastern Industrial Park Inc.

SUBJECT Labor: Teamsters Local 294, N. L. R. B. Cases 3-CC-605 & 3-CC-606 and Seeler etc. v. Local 294 etc., U. S. D. C. N. D. N. Y. Case 71-CV-164

DATE	SERVICE	TIME							
		1		2		3		4	
1972 January	TOTALS FORWARDED	125	6	52	1				
3-10	preparing (1) NEIP cross-exceptions to trial examiner's decision and recommended remedy in cases 3-CC-605 & 3-CC-606 and (2) NEIP brief supporting same and opposing Local 294 exceptions	107	0						
April 17	examining NLRB April 14 decision and order in cases 3-CC-605 & 3-CC-606; checking enlarged remedy against case precedents	1	0						
	TOTALS	233	6	52	1				

A89

EXHIBIT 7

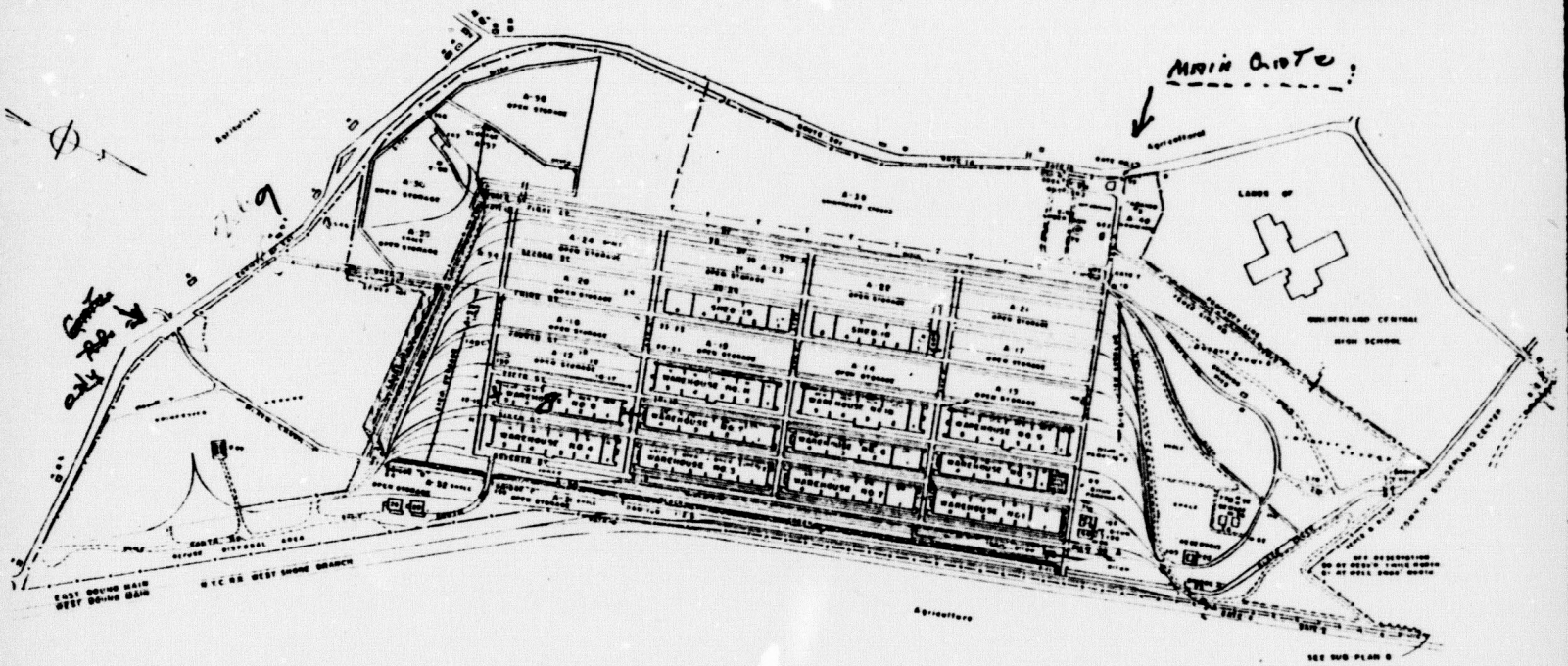


Exhibit 7 A-89

EXHIBIT 8

D. E. LONG, INC.

PERTINENT EXPENSES FOR PERIOD JANUARY 1 - NOVEMBER 30, 1971

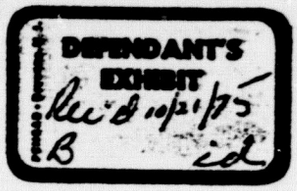
Equipment Maintenance		$ 24,653
Terminal & Warehouse		1,974
Insurance & Safety		19,532
Administrative:		
Salaries		21,928
Office Salary		5,701
Office Supplies & Expenses		
Travel	$ 36.71	
Other Office Expense	1,207.34	
Miscellaneous Office Expense	2,131.74	3,376
Communications		2,397
Miscellaneous		
Miscellaneous	341.02	
Bank Charges	111.31	
Other	7.27	460
Taxes & Licenses		
Operating	25,723.78	
Payroll Taxes	365.42	26,089
Equipment Rental		
Equipment Rental	14,016.24	
Other Rental	110.00	14,126
Interest Expense		2,679
		$ 122,915

January 1 - November 30, 1971 47.7 Weeks

Jean Lamoreaux
Contractor

October 6, 1975

EXHIBIT B



A91

November 1, 1971

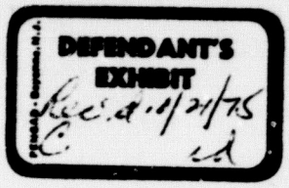
Northeastern Industrial Park Inc.
and Rotterdam Ventures Inc., Drs.
Post Office Box 98
Guilderland Center, New York, 12085

. . . . . .

To Professional Services re Local 294,
International Brotherhood of Teamsters,
Chauffeurs, Warehousemen and Helpers
of America, in National Labor Relations
Board Cases 3-CD-605 & 3-CB-606, and
related matters, partial, on account $12,000.00

. . . . . .

EXHIBIT C



A92

ROBERT H. JONES III
ATTORNEY AND COUNSELOR AT LAW
111 WASHINGTON AVENUE
ALBANY, NEW YORK 12210

ROBERT H. JONES III
GEORGE W. HARDER

462-5588
AREA CODE 518

July 15, 1972

Northeastern Industrial Park Inc.
and Rotterdam Ventures Inc., Drs.
Post Office Box 98
Guilderland Center New York, 12085

. . . . . .

To Professional Services and Disbursements re labor relations with Local 294, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, in National Labor Relations Board Cases 3-CC-605 & 3-CC-606, to 30 June 1972 — $16,326.44

To Professional Services	$26,750.00
To Disbursements per attached detailed statement	$1,576.44
Total	$28,326.44
Credit remittances 15 November & 10 December 1971	$12,000.00

. . . . . .

ROBERT H. JONES III

Northeastern Industrial Park Inc.
and Rotterdam Ventures Inc., Drs.
July 15, 1972

To Disbursements

Item		Amount	Amount
(1)	Telephone & Telegraph Tolls		$281.87
	[1971]		
	April	$17.39	
	July	20.96	
	August	10.62	
	November	18.99	
	December	134.93	
	[1972]		
	January	78.98	
(2)	Petty Cash		$799.30
	[1971]		
	April	$117.70	
	May	6.25	
	June	40.66	
	July	223.30	
	August	57.74	
	November	31.55	
	December	4.20	
	[1972]		
	January	291.80	
	February	.45	
	April	23.55	
	May	2.10	
(3)	Sundry [Check Register]		$279.03
	[1971]		
	22 November Duracolor Photo Service [12861]	$20.22	

To Disbursements

Item			Amount	Amount
	Sundry [Check Register] - continued			
	22 November	Joyce Expediting Service [12874]	$33.00	
	[1972] 10 May	CSA Reporting Corp. [13232]	225.81	
(4)	Travel			$216.24
	[1972] 11 January	Washington, District of Columbia	$216.24	
(5)	Total			$1,576.44

Defendant's Exhibit M
Article 8, Section 3(b)

not authorized by such organizations, without assuming liability therefor. It is understood and agreed that failure by the International Brotherhood of Teamsters and/or the Area Conference to authorize a strike by a Local Union shall not relieve such Local Union of liability for a strike authorized by it and which is in violation of this Agreement.

(b) The question of whether the International Union, an Area Conference, or a Local Union, separately or jointly, participated in an unauthorized work stoppage, slowdown, walkout or cessation of work in violation of this Agreement by calling, encouraging, assisting or aiding in such stoppage, etc., in violation of this Agreement, or whether an Employer engaged in a lockout in violation of this Agreement, shall be submitted to the grievance procedure at the national level, prior to the institution of any damage suit action. When requested, the Co-Chairmen of the National Grievance Committee shall immediately appoint a subcommittee to develop a rec-

ord by collecting evidence and hear testimony, if any, on the sole question of Union participation or Employer lockout in violation of this Agreement. The record shall be immediately forwarded to the National Grievance Committee for decision. If a decision is not rendered within thirty (30) days after the Co-Chairmen have convened the National Committee, the matter shall be considered deadlocked.

A majority decision of the National Grievance Committee on the question of Union participation or Employer lockout in violation of this Agreement shall be final and binding on all parties. If such majority decision is rendered in favor of one or more of the Union entities, or the Employer, in the case of lockout, no damage suit proceedings on the issues set forth in this Article shall be instituted against such Union entity or such Employer. If, however, the National Grievance Committee is deadlocked on the issues referred to in this subsection 3 (b), either party may institute damage suit proceedings, but the

record of the National Grievance Committee and its Subcommittee shall not be offered in evidence by either party for any purpose. Except as provided in this subsection 3 (b), agreement to utilize this procedure shall not thereafter in any way limit or constitute a waiver of the right of the Employer or Union to commence damage suit action. However, the use of evidence in this procedure shall not waive the right of the Employer or Union to use such evidence in any litigation relating to the strike or lockout, etc. in violation of this Agreement. There shall not be any strike, slowdown, walkout, cessation of work or lockout as a result of a deadlock of the National Grievance Committee on the questions referred to under this subsection 3 (b), and any such activity shall be considered a violation of this Agreement.

Nothing herein shall prevent the Employer or Union from securing remedies granted by law except as specifically set forth in this subsection 3 (b).

approximately five years while attending Law School, and working during the depression.

Then it has been my privilege to be active in the American Bar Association's Labor Relations Law Section, and for three years I was privileged to be the Chairman for Management of its leading Labor Law Relations Law Section -- pardon me -- Committee, the one on Development of Law and National Labor Relations Act. At that time, we laid the foundation for the book which the Section and the Association has since published entitled, "Developing Labor Law," and it was my privilege and responsibility to establish the structure of that book, but I was equally fortunate in not having to write it.

I have been representing management from an office here in Albany for 25 years. Before that, I was Labor Relations Counsel to the Robert Young Conglomerate of Chesapeake & Ohio, and the Nickel Plate, and Wheeling & Lake Erie, and Pierre Marquette Railroads with a terminal office in Cleveland, Ohio.

I could go on, but I think that is elaborate and extensive enough.

Q Did there come a time, Mr. Jones, in 1971, when you were retained as General Counsel for the Northeastern Industrial Park, in Buffalo, to act as Labor Counsel

in connection with a picketing matter that was taking place here?

A There did.

Q And when was that?

A My first recorded contact was April 1, 1971. It was a telephone call from then Northeastern Industrial Park Executive Vice President, Gerald E. McKenna. However, I did shortly before that, on a date not recorded in my services record, I had received a telephone call from their General Counsel in Buffalo.

Q And what generally were the circumstances surrounding your initial retainer?

A Let me take that in two steps. General Counsel for the Northeastern, at that time, was and I believe still is, a law firm of Hodgson, Russ, Andrews, Woods & Goodyear, in Buffalo. They are a large and prestigious firm, and they have a fine labor department headed by a gentleman named Arnold T. Olena. Mr. Olena and I have worked together and known one another for 20 years.

He telephoned me and asked me if I would be able to assist one of the office's clients, which had facilities in this area. He described the situation briefly, that Northeastern Industrial Park, the client in issue, had already filed a National Labor Relations Board Region 3, at the Region's resident office

here in Albany, two unfair labor practice charges.

That was against Teamsters Local 294, each alleging mainly, illegal secondary boycotting in violation of the National Labor Relations, Section 8B4B, and he said that the company and his firm were deeply concerned that they receive the best possible attention for mainly two significant reasons: One, it involved an Industrial Park -- that is, the picketing involved an Industrial Park with railroad access, and perimeter motor vehicle access at a number of points. There had been picketing at that time, or an attempted picketing at that time inside the Park, and there had been picketing outside of the Park at various locations. This presented questions of quasi-public property, as well as private property, and some public property.

Not too long before, Carrier Corporation in Syracuse had had a very bad result in a case which had many similarities, and Northeastern and Mr. Olena's firm did not want Northeastern to have a similar bad result.

I told him that I would be happy to assist. He said that you were the General Attorney for the Park here in Albany, and I might expect a telephone call from either you, or Mr. McKenna.

THE COURT: Is that Mr. Williams?

THE WITNESS: Yes, Mr. Frank J. Williams.

BY MR. WILLIAMS:

Q Go ahead.

A That was the beginning.

Q With that, did you undertake services for the Park in connection with certain picketing then taking place?

A I did.

Q And describe generally, if you will, for the Court, the nature of your services in a chronological order, as best you can.

A Let me give you a capsule, and then enlarge it as you may require.

The case, as any secondary boycott proceeding under the Act, had two phases: The first, as the matter had already been initiated when I got into it, was preparation for what we call a Section 10-L injunction hearing, National Labor Relations Board, Region 3, Director, Thomas W. Sellers' petition to this Court, and Judge Foley for a preliminary injunction under Section 10-L of the National Labor Relations Act to restrain picketing pending the Board's determination of a substantive issue in the case.

That went forward in -- on April 9th, 1971, so by the time I got in it, we were under the gun for preparing for it.

The second phase was, of course, the substantive hearing before the National Labor Relations Board Administrative Law Judge, and they call it a Trial Examiner, with what further proceedings might be necessary before the Board, and possibly the United States Court of Appeals as developments should indicate.

That hearing came later, on June 23rd and 24th, 1971, with subsequent proceedings before the Board, in the autumn and winter of 1971-72.

The third thing to do was to get ready for the hearing. Now, I am sure that the Court is well aware of this --

Q (Interrupting) By the hearing, you are referring to the injunction hearing?

A the injunction hearing.

There, the National Labor Relations Board Attorney in charge of the case seeks on behalf of the Regional Director, the Regional Attorney of the Board Region involved, a preliminary injunction, and sometimes a Temporary Restraining Order.

And in that case, the charging party, Northeastern Industrial Park in this matter, is permitted to appear and participate. The question whether it has the status of a party before the United States District Court is debatable in my judgment with

the legislative history established that it does, but there was a large body of contrary law suggesting that the charging party has a premise of right, but does not have the status of the party.

But nevertheless, his right to participate is established by all decisions, and some decisions of the status of the party.

So, we interviewed the company's witnesses who had already, in some cases, given statements to the Board, and prepared them for their testimony before this Court.

That hearing went forward on schedule, and on April 13th and 14th, Judge Foley issued a decision dated April 13th, and signed an Order dated April 14th, and it was served on April 15th, granting preliminary injunction.

It was necessary, of course, to submit briefs and proposed findings of facts and conclusions of law. The Board Attorney submitted a brief and the proposed findings and conclusions. I submitted on behalf of Northeastern a post-hearing brief addressed to the issues, and to Local 294's Defense.

Following that, the hearing before the then Trial Examiner was scheduled to proceed in the spring, but at the request of 294 it was postponed

until July.

It went forward on the adjourned date, and, of course, between the conclusion of the 10-L hearing in this Court, and the substantive hearing before the Trial Examiner it was necessary, again, to prepare witnesses to the substantive issues as distinguished from the prima facie substantive, and some procedural issues before this Court.

The issues in the two proceedings are somewhat alike, but are materially, nevertheless, different.

We examined the law to slot the presentations squarely in the cases that would support Northeastern's position, and avoid the problems that beset the Carrier and other similarly-situated companies.

The hearing went forward before a Trial Examiner named Harry H. Kuskis, on June 23rd and 24th. After that, the respondent, Local 294, filed its brief, and General Counsel filed a brief, and your company filed a brief, which I prepared.

The Trial Examiner rendered his decision. His briefs, I might say were filed in Albany, and he rendered his decision in, I believe, November of 1971, sustaining the General Counsel's position and your company's position. That is,

Northeastern.

However, he did not grant the extensive remedy which, in all of the circumstances Northeastern and I felt it was entitled to. He granted very broad relief, but he did not grant so broad relief as it seemed to me the situation called for.

This, incidentally, presented a very serious point. It has been my personal conviction, and I hold it still, that National Labor Relations Board paid more attention to drawing remedies against employers, than it does in drawing effective remedies against unions, and I was very serious in stating to the Board that it should enlarge its remedial approach and thinking in cases where there was a repeated aggressor, with a history of the sort that Local 294 had in unlawful boycotting.

Mr. Kuskis bought the argument in part, but he did not buy it in full, so after Local 294 had filed exceptions with the Board to the Trial Examiner's decision, and filed a brief in support of those exceptions, General Counsel filed nothing at all. He was content to stand on the proceedings, and let it go, and I filed a brief -- pardon me, I filed cross-exceptions addressed to the narrowness of the Trial Examiner's recommended remedy, and I filed a

brief supporting those exceptions, and covering Local 294's exceptions.

Fortunately, the National Labor Relations Board concurred in our view of the law, and while affirming the Trial Exmainer's decision, modified it to enlarge the remedial order, as we had requested. This was, at the time, the most extensive remedial order the National Labor Relations Board had issued against a union in its history, and we were pleased.

MR. TOCCI: I object to that as being without any foundation, your Honor.

THE WITNESS: I can give the foundation.

THE COURT: Well, we can forget the part where he said, "we are pleased."

MR. TOCCI: And also that that was the broadest remedial order. There is no foundation for that.

THE WITNESS: Do you want me to give it, a foundation?

MR. TOCCI: Can you give us a case citing anything that said that?

THE WITNESS: Certainly.

Well, the lead case prior to Northeastern was Teamsters Local 327, involving the Heartland Company,

173 NLRB, 1402, 1968.

THE COURT: What is that?

THE WITNESS: That is 173 NLRB, 1403, 1968. And also other cases on broad remedial orders involving Teamsters 282, in the United States Trucking Corporation, 146NLRB, 956, in 1964, and United States Brotherhood of -- excuse me, I will withdraw that.

Then Local 522 of the Teamsters, 129 NLRB, 376, enforced in 294 Fed. 2d, 811, by the Third Circuit in 1961, and then in Local 282 of the Teamsters, NLRB, 428 Fed.2d, 994, 1970.

Those established the Board's authority to grant a broad remedial order going beyond the specific circumstances of the case where in substance it was found that the Labor organization involved to be a deliberate and persistent offender, and we wanted more than they had given, and we got it.

BY MR. WILLIAMS:

Q Now, Mr. Jones, in your opinion was your participation in the subsequent NLRB proceeding necessary to the relief that Northeastern sought, resulting from this picketing?

A Yes, sir.

Q Would you elaborate on that somewhat beyond what you have already testified?

A Yes. National Labor Relations Act established both public and private rights. The function of its General Counsel is principally to enforce the public right. He has a modest responsibility to concern himself with private rights, but the courts, I think, are very clear that his primary function is to protect and enforce public rights as distinguished from private rights.

The statute clearly envisions that a charging party has full right to appear in proceedings before the Board as a party, full status of the party, with complete rights of any party to call witnesses, to examine and cross-examine witnesses, and present documentary and other evidence, to submit briefs, memorandum, arguments in support of its position, even if that position may be different from the position factually or legally taken by the General Counsel.

There is a limitation in the nature of proceedings before a Board or a Court which obliges the charging party's attorney to take second billing, so to speak, to General Counsel attorneys, and the General Counsel Attorney has a primary right to proceed. He may call his witnesses, and examine them first, and the charging party's attorney is ordinarily limited to

supplementary examination of such witnesses. And also supplementary examination or supplementary cross-examination of the respondent's witnesses.

But the charging party may nevertheless educe witnesses and evidence totally of his own, with full right to proceed as any other attorney would, representing a party in court. Also to receive notice of all proceedings, postponements and so forth. This is contemplated by the statute, and confirmed by the United States Supreme Court.

The reason for this is that the Board has institutional interests which it deems worthy of protection, which sometimes differ from the interests as private Counsel, and private litigants see the law, and the purposes of the statute.

Beyond this, the attorneys representing the General Counsel, in proceedings before the Board, tend to take very narrow positions. They are more interested, and I say that respectfully and not disparagingly, in disposing of the case, than they are in getting the case disposed of.

And consequently, the positions they take, the narrowness of those positions is sometimes not adequate protection unto the charging party. For example, in this particular case, a preliminary

conversation with the Board before even the 10-L hearing in this Court, suggests that the Board was going to take a considerably narrower approach to the law and the remedy, to the substantive issues, and the remedy itself, than I felt Northeastern's interest merited. For example, when the Trial Examiner sought remedy only partly as Northeastern conceived it, General Counsel could not object to that. He filed no opposition to the Trial Examiner's report. He didn't even file a brief, opposing the union's exceptions and the union's brief. He was content to let everything stand on the General Counsel's -- pardon me, on the Trial Examiner's decision.

I do not reproach him for this. It was a judgment call that he made, or his superiors made for him, but it did not seem, in light of Carrier and other decisions, adequate protection for Northeastern.

The final decision by the Board showed, the Board saw things Northeastern's way, and I think that that is the full answer to your question.

Q Now, in the course of the services that you have just described, was another corporation called Rotterdam Ventures, Inc., which was a party to the NLRB proceeding, an identical beneficiary of your services?

MR. TOCCI: I object to the form of the

THE WITNESS: Well, if I --

MR. TOCCI: (Interrupting) May I have a ruling on the objection, your Honor?

THE COURT: Well, I was writing something. You asked him the fair and reasonable value of the bill?

MR. WILLIAMS: My question is: What is the fair and reasonable value of your services?

THE COURT: No, overruled. I will allow him to answer that.

THE WITNESS: At that time, I think a fair and reasonable value of the services was something in the neighborhood of $33,000 or $34,000.

BY MR. WILLIAMS:

Q And did you render a bill to Northeastern Industrial Park for those services?

A Yes, I did.

Q And do you have a copy of that, or is that bill present?

A I believe so. Yes, sir, I do.

Q What is the amount of the bill that you rendered?

A It is $26,750 for services, plus the stated amount --

Q (Interrupting) Does the first amount represent charges for services?

A That is for services only.

Q And disbursements, what were the disbursements that were

added to that?

A They were $1,576.45.

Q And did Northeastern in due course pay that amount to you?

A It did.

MR. WILLIAMS: I have no further questions.

THE COURT: What is the total of that?

THE WITNESS: It is $28,326.45.

THE COURT: And that includes how much for services?

THE WITNESS: It is $26,750.

THE COURT: And that is dated July 15, 1972, that bill?

THE WITNESS: Yes, sir.

MR. WILLIAMS: That is all.

MR. TOCCI: May we have a short recess; five minutes?

THE COURT: We are getting near lunch time. How long do you want to go?

MR. TOCCI: I would like to break now, if your Honor doesn't mind.

THE COURT: I don't know. What is your commitment, Mr. Jones?

THE WITNESS: I have reserved the day. I want to be in Philadelphia tomorrow, if I can.

(Defendant's Exhibit E for identification, received in evidence.)

THE CLERK: Now, Defendant's Exhibit F, marked for identification.

(Document marked Defendant's Exhibit F for identification.)

BY MR. TOCCI:

Q Now, I show you Defendant's Exhibit F, Mr. Jones, and I ask you if you recognize and can identify that document?

A I believe that I recognize it, and I am certain that I can identify it if you will just give me a moment.

Yes, that appears to be the Unfair Labor Practice Charge, Rotterdam Ventures, Inc., the file of April 1 of the National Labor Relations Board in the case 3CC606.

MR. TOCCI: I offer this in evidence, your Honor (offering to Counsel).

MR. WILLIAMS: Your Honor, I am going to object to it on the grounds that it is irrelevant. Mr. Jones has already testified that whatever, on direct examination, that whatever services Rotterdam Ventures benefitted from were purely incidental. This is outside of the scope of this particular action here. We are not suing for damages for the Rotterdam

Ventures, and I don't see any relevancy of the admission of this.

THE COURT: What is your purpose?

MR. TOCCI: This was the Unfair Labor Practice Charge which was the basis for the hearings before the National Labor Relations Board, at which time Mr. Jones appeared as attorney for the Rotterdam Ventures, and Northeastern Industrial Park.

THE COURT: And they were tried together?

MR. TOCCI: Yes, sir.

THE COURT: And the decision covered both charges?

MR. TOCCI: Yes, that is why I introduced it in evidence so that your perusal will show that the letter covered both charges.

THE COURT: I will receive it in evidence.

THE CLERK: Defendant's Exhibit F, received in evidence.

(Defendant's Exhibit F for identification, received in evidence.)

BY MR. TOCCI:

Q Mr. Jones, was it not, as I stated, this charge and the previous charge we have introduced here, that formed the basis for the issuance of a complaint in 3CC605 and 3CC606, which are the cases in which you

appeared before the National Labor Relations Board?

A Technically, the answer to your question quite precisely is that they merely initiated the Board's investigative proceeding. I will refer to the Complaint, which will undoubtedly answer the question.

The Complaint alleges in its Paragraph 1-A, the only charge in Case 3CC605 was filed by Northeastern on March 26, 1971, and served by registered mail on Respondent on or about March 26, 1971, and in Paragraph 1-B alleges the only charge in Case 3CC606 was filed by Rotterdam on April 1, 1971, and served by registered mail on Respondent on April 5, around there, 1971, and so precisely the Board has not, in my experience, has ever said that it is founding a Complaint on a particular charge. The charge merely initiates the proceeding, and the Board then issues a Complaint based on its investigation.

Q Yes, and this is the charge that was filed and alleged in the Complaint that you just read from, is that correct?

A I have so stated.

Q Yes, and did you prepare this charge, Mr. Jones?

A No, sir. I have already testified that I did not.

Q And who prepared it?

A I believe the National Labor Relations Board prepared it

Q And were you there when it was filed, or did your office file it?

A I have already testified we had nothing to do with the charges filed on March 26th, and April 1, 1971.

MR. TOCCI: Thank you.

THE CLERK: Defendant's Exhibit G, marked for identification.

(Document marked Defendant's Exhibit G, for identification.)

BY MR. TOCCI:

Q I show you Defendant's Exhibit G, Mr. Jones, and ask you if you can identify the same (offering)?

A This is Exhibit G for identification, and this appears to be the April 21st, 1971 Complaint, National Labor Relations Board General Counsel issued against Teamsters Local 294 in Cases 3CC605, and 3CC606, together with an Order consolidating the cases, and a Notice of Hearing.

Q And it provided for a joint trial of those cases, Mr. Jones; a joint hearing, did it?

A It consolidated the matters for hearing.

Q Yes, and is that the Complaint on which a hearing was held on June 23rd, and June 24th, 1971?

A There is a Complaint -- it is the Complaint on which a hearing was held in these cases on those dates.

MR. TOCCI: Yes. Now, I would offer this in evidence, your Honor.

MR. WILLIAMS: No objection, your Honor.

THE COURT: Received.

THE CLERK: Defendant's Exhibit G, received in evidence.

(Defendant's Exhibit G for identification, received in evidence.)

BY MR. TOCCI:

Q Now, Mr. Jones, in the NLRB proceedings, Cases 3CC605 and 3CC606, you submitted a brief to the Trial Examiner, did you not?

A Yes, I did.

Q And you submitted that brief on behalf of the Northeastern and Rotterdam Ventures?

A Yes, sir, I did.

Q And in those two cases, again, Mr. Jones, did you file exceptions to the Trial Examiner's report?

A I have so testified, and I did.

Q And did you file that on behalf of Northeastern and Rotterdam Ventures?

A I did.

Q And did you file the brief in support of your exceptions, Mr. Jones?

A Yes, sir.

Q And did you file that on behalf of the Northeastern and Rotterdam Ventures?

A Yes, sir.

Q Now, Mr. Jones, commencing with April 1st, 1971, did you examine your time records for that date?

A April 1st, 1971?

Q Yes, would you do that?

A Yes, sir.

Q And tell me what your time records show for services rendered on that date in the cases that we have been discussing; 3CC605 and 3CC606, and the injunction proceedings?

A Yes, sir. They show a telephone call from Gerald E. McKenna.

Q That is all that is shown on April 1st?

A That is all that is shown on April 1st.

Q And that is the 12-minute phone call?

A That is the 12-minute phone call, yes, sir.

Q And now, did you examine your time records for April 2nd, 1971 in regard to these cases that we are discussing, and tell me what they show as services rendered in those cases?

A First, so that the record may be clear, let me explain briefly how we keep our time. We enter on separate logs telephone calls. The first logging is telephone

Mr. Williams asked me a question what the services were reasonably worth, and I said that they were reasonably worth $33,000 or $34,000, I believe, in that range, and then either you asked me or it came out that the statement was for $25,000 or $26,000, and --

THE COURT: (Interrupting) Then would your bill be for 339 hours?

THE WITNESS: At that time I was charging $85 an hour.

THE COURT: $85 an hour?

THE WITNESS: Yes.

THE COURT: And that is the bill that you say should have gone out, that amount?

THE WITNESS: Yes, that is correct.

BY MR. WILLIAMS:

Q Mr. Jones, was the charge of $85 an hour, was that in line with the customary and prevailing charges in your particular specialty of the profession?

A It was low.

Q Are you generally familiar with the hourly charges customary in your specialty?

A Yes, sir, I am.

Q And what were those at that particular time, during 1971 and 1972?

A Well, this varies from region to region of this country,

and from city to city in these various regions. In New York, at that time, the charge for services of this sort was running $125 to $300 an hour. That is for persons with even less experience than I, but persons who are capable of giving full service labor counsel.

My normal services were, when I was rendering it to a New York City-based organization, I would sell it at the same rate.

MR. TOCCI: I object to this as being irrelevant. We are concerned with the rate in the Albany area.

THE COURT: I think that we should have the rate in Albany.

THE WITNESS: In Albany, at that time, the rate for labor counsel was running approximately $100 an hour. That is labor counsel.

THE COURT: Is that for union labor lawyers, too?

THE WITNESS: Management.

THE COURT: Is that for union?

THE WITNESS: I can't speak to that.

MR. TOCCI: I can speak for that.

THE WITNESS: And the rate, I am informed reliably by colleagues in major law firms in

MR. WILLIAMS: Now, I call Mr. Anthony DeLorenzo.

ANTHONY DE LORENZO, called as a witness, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. WILLIAMS:

Q Mr. DeLorenzo, by whom are you presently employed?

A Northeastern Industrial Park.

Q And are you also an employee of D. E. Long, Inc.?

A Not at the present time.

Q Not at the present time?

A No.

Q Now, I take you back to 1971 and 1972, and by whom were you employed at that time?

A Northeastern Industrial Park, Rotterdam Ventures, and D. E. Long.

Q In what capacity were you employed by those corporations at that time?

A Sales manager.

Q Sales manager?

A Yes.

Q And where was D. E. Long -- withdraw that. What sort of a corporation was D. E. Long, Inc.?

note in blue ink a circle around an intersection with the word "Gate," written in handwriting. When you say reserve gate, what gage is that? Does that have a number?

A That has a number. I believe it is Gate 9.

Q Would you write in "Gate 9," or the figure "9" after the word "Gate"?

(The witness marked the exhibit.)

MR. TOCCI: Is that reserved gate 9?

MR. WILLIAMS: Yes.

THE WITNESS: Yes, sir.

BY MR. WILLIAMS:

Q During the year 1971, Mr. DeLorenzo, did the corporation D. E. Long, Inc., have at least, at least $50,000 in gross revenues from traffic involved in interstate operation?

A I would say in excess of $50,000, yes,sir.

Q Now, specifically, do you recall coming to work on the morning of March 25th, 1971?

A Yes, sir.

Q And what happened on that particular morning?

A Well, when I arrived at the office I got a call --

THE COURT: What office is this, now?

THE WITNESS: Northeastern Industrial Park.

BY MR. WILLIAMS:

Q Are you referring to your office in Northeastern Industrial Park?

A Yes, sir. I received a call from a Mr. -- I am not positive of the firm name -- but we call him Eddie Cannon.

Q Would you spell that?

A I don't know how to spell it. I think it is C-A-N-N-O-N, I believe.

Q And who is he?

A He was employed by R.& R. Handling Company, who was a tenant in Building 8 in our Rotterdam or in our Northeastern Industrial Park.

Q And can you identify Building 8 on Plaintiff's Exhibit 7?

(The witness marked the exhibit.)

A Right here. I have marked it.

Q Do you want to write the figure "8" in the middle of the building?

A Yes.

(The witness marked the exhibit.)

MR. TOCCI: May I come forward and mark my exhibit, also?

MR. WILLIAMS: Yes.

(Documents were compared by Counsel.)

THE WITNESS: That is R.& R.

BY MR. WILLIAMS:

Q Now, you say that R.& R. Handling was a tenant of the Park at that time?

A Yes, sir, they had a lease on Building 8.

Q And what was the nature of the business of R.& R. Handling?

A They were in the warehousing business, of storing paper products for different companies.

Q Now, going back to the call that you received from Mr. Cannon, what was the nature of that call, and what did he say to you?

A When Mr. Cannon called me in the morning, he said that he was being picketed down there and he would like to have us come down.

So I immediately called our Security Chief, Mr. McMasters, and I called our Executive Vice President, Mr. McKenna, and also I called Herbert Grimshaw on his car phone, because he --

Q (Interrupting) Did he -- go ahead, I am sorry.

A Because he wasn't at home when I called him, and I called his car phone, and he arrived at the office and went down and met with the two union representatives that were down in the Park, I believe.

Q And who is Mr. Grimshaw?

A Mr. Grimshaw was the Vice President of Northeastern

Industrial Park.

Q What time of the morning did this occur?

A I would say about -- just guessing -- 8 o'clock. 8 o'clock, or so.

Q And following that, did you observe pickets at the main gate of the Park?

A When I -- about 9:30 or so, yes, about 9:30 I looked out of my office, and I noticed pickets at the main gate, and I went in to Mr. Grimshaw's office and mentioned to him that they were picketing the main gate, and we both went down to the main gate.

Q Now, what sort of -- how many pickets were there at this particular time, if you can state?

A I would think four or five.

Q What sort of signs were they carrying?

A They were carrying R.& R. Handling signs.

Q Indicating some dispute with R.& R.Handling?

A Yes.

Q Now, did you and Mr. Grimshaw, you say that you actually went to the scene?

A Yes, sir.

Q And did you have words with anybody at the scene?

A I didn't, myself. I don't recall. But Mr. Grimshaw met with Mr. Spassioso, who is a union man, and Mr. Bentley, and he reminded Mr. Spassioso of the agreement

that they had earlier, that they were to picket just the gate mentioned for R.&R. Handling, which is Gate No. 9.

Q And that is the reserve gate, or Gate No. 9 shown on the exhibit, Exhibit 7?

A Yes, sir, and Mr. Spassioso said that he wasn't a lawyer, and to go and call Nick Robelotto.

Q And what then occurred?

A We went back to the office, and approximately noontime Mr. Spassioso and Mr. Bentley came to the office, and I met them there, and they asked to see the President of the company, and I told him that Mr. Galesey was not available, and he was not here, and then they said they wanted to see the Executive Vice President. I told him that he was not there, but Mr. Grimshaw was in charge. And so we went into Mr. Grimshaw's office, the three of us, and Mr. Grimshaw was there.

Q What occurred then?

A Mr. Grimshaw again mentioned to Spassioso the agreement that they had not to picket the main gate, but just to picket the R.& R. Handling, and they said, "Call Nick Robelotto."

So Mr. Grimshaw --

Q (Interrupting) Do you know Nick Robelotto?

A Yes, he was the President of the Teamsters Local 294.

Q And then what occurred?

A Mr. Grimshaw called Nick Robelotto. Mr. Robelotto got on the phone. Mr. Grimshaw has a speaker arrangement on his phone so we can hear -- so we could hear the conversation. Mr. Grimshaw mentioned to Nick Robelotto that the prior agreement that he had with Mr. Spassioso and Bentley, and Mr. Robelotto told Mr. Grimshaw that if he couldn't go down and picket the R.& R. Handling, that he would tie up the whole Park and then he said, "I don't want to talk any more on the phone, on this open phone," and he told Spassioso and Bentley to come back to the office, that he would give them further instructions.

Q Now, the reference to picketing of R. & R. Handling, you say that there was picketing at Gate No. 9, the reserve gate?

A Yes, sir.

Q Was there a reference to any other kind of picketing of R. & R. Handling at the time, or any discussion about picketing in the Park or at a gate or --

MR. TOCCI: (Interrupting) Your Honor, I am going to object to this as being a little leading.

THE COURT: Overruled.

THE WITNESS: I don't quite understand your question.

MR. WILLIAMS: Well, I will withdraw that question.

BY MR. WILLIAMS:

Q Now, on the following day, Mr. DeLorenzo, did picketing continue?

A Yes.

Q Was there a traffic tie-up outside of the main gate?

A Yes. Yes, there was.

Q And can you describe the traffic tie-ups and the types of vehicles?

A When I got to work about 7 o'clock, there was a big tie-up along the main gate. There was only one line of traffic, so I went to my office at Northeastern Industrial Park, and decided to call the State Police because there was such -- it was like a one-lane traffic, and the school buses were coming, and I thought that somebody would get hurt or something.

Q Was traffic moving in and out of the Park at the main gate at that time?

A No, sir.

Q And did this picketing continue, then, after March 26th?

A Yes, sir.

Q Now, do you recall any event occurring on March 29th, which -- let me withdraw that. What day of the week was March 26th, can you recall?

A It was either a Wednesday or a Thursday; I am not sure.

Q And can you recall a particular event occurring on March 29th?

A March 29th, I believe, was on a Monday. Yes, at about close to 5 o'clock, one of our executives coming from our other Park in Rotterdam, came into our office and said that D. E. Long was being picketed. So we went out to the gate there, and the same fellows that were carrying R.& R. Handling signs now were carrying signs against the D. E. Long, that their office and clerical workers were not being, I think, being protected and receiving the benefits of Local 294, or something to that effect.

Q Now, let me go back for a moment to the speaker phone conversation with Mr. Robelotto. At that particular time, Mr. Robelotto's remarks were addressed at the picketing of R. & R. Handling, only, is that correct?

A Yes, sir.

Q And Mr. Robelotto made no reference to picketing of D. E. Long at that time?

A No, sir.

Q And did Mr. Robelotto make a reference to picketing of R. & R. Handling inside the Park?

A Yes, yes.

Q Specifically?
A He said that if he couldn't go down there and picket R. & R. Handling, he would tie up the whole Industrial Park.
Q But he made no reference to D. E. Long at all?
A No, sir.
Q Did you, at any time, receive in your official capacity with D. E. Long, Inc., any notice or any indication at all from Local 294 with respect to a complaint about D. E. Long?
A No, sir.
Q To your knowledge, did D. E. Long receive any such notice from the union prior to the picketing?
A No, sir.
Q What did the clerical personnel of D. E. Long at that time consist of?
A We have a gentleman by the name of Gus P-A-L-O-N-E, who was the Office Manager. He was in an administrative capacity and he also belonged to Local 294, and we had a part-time girl working there.
Q Do you know the hours of the part-time girl?
A I would say maybe 20 hours a week.
Q Now, how long did the picketing of D. E. Long at the main gate continue?
A I believe until April 9th, when we were here in court;

Good Friday.

Q To your knowledge, during any of that period, did you receive any further notice, or any kind of notice from the union, Local 294, about the complaint or a grievance against D. E. Long, other than just the picketing signs?

A Not to my knowledge, no, sir.

Q During this period, did D. E. Long trucks move in and out of the Park?

A No, sir.

Q Was D. E. Long equipment idle during this period?

A Yes, it was.

Q And what sort of equipment did D. E. Long operate at this time?

A They operated large trucks, and tractor-trailers, moving material from the Guilderland Center, or from Northeastern Industrial Park.

MR. WILLIAMS: I have no further questions.

CROSS-EXAMINATION

BY MR. TOCCI:

Q Mr. DeLorenzo, you were only the Sales Manager of D. E. Long, in 1971, were you not?

A That is correct, sir.

Q And you weren't in charge of labor relations, were you?

A No, I was not in charge of labor relations, but I was

at the staff meetings that we had every week.

Q Who was in charge of labor relations at D. E. Long?

A I would tend to think maybe Ward Clark.

Q Ward Clark?

A Yes.

Q And what was Ward Clark's title?

A He was our General Manager.

Q General Manager. Now, you stated that on March 25th, when you came to work, there was a call from someone from R. & R. about picketing at the R. & R. Warehouse?

A Yes, they were picketing on the road, and in front of R. & R. Handling, which is Building 8.

Q And did you go down to that area with Mr. Grimshaw?

A No, I believe I didn't.

Q He went alone?

A He went with Keith McMasters, our Security Chief.

Q So you were not there when Mr. Grimshaw had any discussion with Mr. Bentley or Mr. Spassioso at the R. & R. Warehouse?

A No, I don't believe I was.

Q And that is where you allegedly said an agreement was made only to picket one certain gate?

A Yes.

Q So what you say about that agreement would be all information that you got from someone else?

A From Herbert Grimshaw.
Q You were not present when this alleged agreement was made?
A I believe that I did go down there, but I did not hear the conversation until Herb Grimshaw told me about it.
Q And in any event, there did come a time when these pickets that you said were only at the R. & R. Warehouse went outside and picketed outside the Park?
A They picketed Gate No. 9, which was reserved for R. & R. Handling, on the morning of March 25th, yes.
Q Now, when did they start picketing that Gate No. 9?
A After Mr.Grimshaw made the arrangements with Mr. Spassioso and Mr. Bentley, they agreed to go out, and they immediately left the Park and went to Gate No. 9.
Q Now, that was on the 25th?
A Yes, sir.
Q And --
A (Interrupting) In the morning.
Q And all of the picketing on the 25th was at Gate No. 9?
A No, sir. It started on Gate No. 9. Then about 9:30 or so I looked out the window, and they were picketing the main gate, also.
Q And that was on the 25th?
A Yes.
Q Now, did D. E. Long truck drivers work on the 25th?

A I believe they did.
Q And did the office help of D. E. Long work on the 25th?
A To my knowledge, I believe they did.
Q Now, let's go to the 26th. You said that there was some picketing on the 26th, right?
A Yes, sir.
Q Of March. That was at the main gate?
A Yes, sir.
Q Did the employees of D. E. Long come to work on March 26th?
A I believe they did, sir.
Q Now, the 29th was a Monday?
A I believe so.
Q And up until the 29th had the employees of D. E. Long all reported for work?
A To my knowledge, they did, yes.
Q Now, how about the 29th, itself, and did the D. E. Long truck drivers and office people come to work?
A Yes.
Q And you said it was approximately 5 p.m. when you saw the pickets outside the main gate with D. E. Long signs?
A I think I said that one of our executives came in the gate approximately 5 o'clock, yes, and we went out there. It is within 15 minutes or so.
Q That was after the regular work day, so your truck drivers

worked that day?
A I believe so.
Q And also your office people?
A I believe so.
Q Now, on Tuesday, the 30th, did D. E. Long truck drivers and office people report for work?
A No, sir.
Q And how about the dates between the 30th and April 9th? Did they report for work?
A To my knowledge, they did not, sir.
Q Did you work Saturdays and Sundays, normally?
A I work Saturdays.
Q I am sorry,did D. E. Long truck drivers, did they work Saturday and Sunday?
A On occasions, they do work on Saturdays.
Q But it would be an unusual situation at that time, or a normal situation?
A Well, sometimes it would be normal, and sometimes it would be overtime.
Q How about in April of 1971? Were you working on Saturdays then; D. E. Long?
A I would have to say probably a couple did work.
Q Now, April 9th was Good Friday, I believe, in 1971?
A Yes.
Q And was Good Friday a scheduled holiday for your

employees at D. E. Long?

A I believe it was, sir.

Q So that they would not have worked on April 9th?

A They did not work on April 9th, but they didn't get paid, either, I believe, because they hadn't worked. They were on strike.

Q But I am saying that even if the picketing wasn't there, on April 9th?

A Yes.

Q They wouldn't work anyway because it was a paid holiday?

A That is correct.

Q Now, R. & R. Handling was a tenant in the Park, is that correct?

A That is correct.

Q And you mentioned that Northeastern, D. E. Long, and Rotterdam Ventures had the same stockholder at that time?

A The same officers, yes.

Q And did R. & R. Handling have any connection whatsoever with Northeastern, Rotterdam, or D. E. Long, other than being a tenant at the Park?

A Only as being a tenant at the Park.

Q Just a tenant?

A Yes, just a tenant.

Q No common management?

Building 8?

MR. WILLIAMS: Your Honor, again, I am going to object to the relevancy of it. This all happened after the fact. I can't see the relevancy of some other tenant going into that building after R. & R. left.

MR. TOCCI: It is not after the fact of the damages. The damages that they are claiming is up to the end of Mr. Jones' bill, and that goes way into 1972, and I submit that this is on the issue of damages.

THE COURT: I am not sure, but I will receive it.

Did you have anything to do with this other company coming in?

THE WITNESS: No, sir.

BY MR. TOCCI:

Q You did not?

A No.

Q And when R. & R. ceased its occupancy, if we concluded it was May 10th, 1971, did they have any presence on the premises after whatever date they did cease occupancy?

A What date are you speaking of?

Q Well, we are working on or about May 10th, 1971.

A Yes.

Q And you do know that there was a time that they left in 1971?

A Yes.

Q Now, after they ceased occupying that building, did they have any presence in any way at the Park, by way of equipment, or an office, or anything of that nature?

A To my knowledge, no, after '71; to my knowledge.

Q And now, I'm asking you after they terminated their lease, did they have any presence?

A I am not sure whether the word "termination of their lease," is correct. I believe that they went out of business. I am not sure.

Q Oh, they actually went out of business?

A I believe that they did.

Q Well, did they occupy Building 8 after their lease terminated?

A As I say, termination -- I just don't know how to phrase that. They did leave sometime in 1971. I would have to look at the records.

Q All right. Well, I think that we are going to have to have those records.

Did they occupy the building after they went out of business?

A Well, evidently not, to my knowledge. I don't know.

MR. TOCCI: I have no further questions.

MR. WILLIAMS: I have no further questions.

MR. TOCCI: I assume that he will produce those records later?

THE COURT: You can check them and see. Mr. Williams can check them.

MR. WILLIAMS: Yes.

MR. TOCCI: That is checking the records to the time that they ceased occupany of the area?

THE COURT: All right.

(Whereupon the witness was excused.)

THE COURT: Does D. E. Long have a claim in here for damages for loss of business, and so forth?

MR. WILLIAMS: No, it is not claiming for loss of business, your Honor. It is claiming damages for idle equipment, and basically that is just a cessation of operations during the period of the picketing.

THE COURT: A cessation of operations?

MR. WILLIAMS: Yes.

THE COURT: But that would be an alleged loss of income?

MR. WILLIAMS: In your Interrogatories,

we have not alleged loss of income, specifically.

THE COURT: Well, I am not clear on it. How do you characterize it? What type of loss did they sustain? Was it a money loss because their equipment was idle?

MR. WILLIAMS: Yes, equipment was idle, and the overhead, and the entire operation, of course, was idled during this period, whereas overhead costs continued.

THE COURT: I understand.

MR. WILLIAMS: Your Honor, are we

t9 going to adjourn for lunch, because I have someone I would like to contact; two other witnesses that I would like to produce this afternoon? One of them is here now, but is this your normal lunch break?

THE COURT: Well, it is around this time. How long would your next witness go?

MR. WILLIAMS: Possibly for me 20 minutes to half an hour, I would think.

THE COURT: All right. We can take our lunch break now and come back at 1:30. How much more do you have?

MR. WILLIAMS: A total of three, including the lady who is here now.

THE COURT: How long?

eligible off of the two-week period that the picketing was in progress?

A Yes, sir, I did.

Q Referring to those records, if you will, please, what figure do you arrive at, as a loss attributable to operating and maintenance expenses of D. E. Long during that period of time?

A Well, I had an 11th-month figure of $122,915 and/or dividing it out, we come up with $5,154 loss.

Q Loss?

A Yes.

THE COURT: How much was that?

THE WITNESS: Five thousand one hundred fifty-four dollars.

BY MR. WILLIAMS:

Q Would you explain for the Court, please, your computation?

A All right. Over the eleven-month period, for D. E. Long, which would be the fiscal period, we had equipment maintenance of $24,653; we had terminal and warehouse at $1,974; our insurances ran $19,532; our administrative salaries were $21,928; and we had other office salaries of $5,701; we had travel of $36.71; we had other office expense of $1,207.34; miscellaneous office expenses of $2,131.74; we had a telephone bill of

$2,397; we have miscellaneous charges of $341.02; we had bank charges of $111.31; and other miscellaneous expenses of $7.27; we had taxes of $25,723.78; we had some miscellaneous payroll taxes of $265.42; and we had equipment rental of $14,623.24; we had other rentals of $110; we had interest expenses of $2,679, which came to a total of $122,915.

Q And then you divided that -- that was for an 11-month period?

A Yes, eleven months.

Q Ending when?

A November 30, 1971.

Q All right. And then you divided that by the number of weeks and came up with a figure for two weeks, is that correct?

A Right.

Q And that was the figure that you mentioned first?

A Right.

Q Do you have that recap written out?

A Yes (offering).

MR.WILLIAMS: May I have this marked.

THE CLERK: Plaintiff's Exhibit No. 8, marked for identification.

(Document marked Plaintiff's Exhibit No. 8 for identification.)

BY MR. WILLIAMS:

Q Mrs. D'Ambrosio, may I show you Plaintiff's Exhibit 8 and may I ask you if that is the computation to which you have just testified?

A Yes, it is.

MR. WILLIAMS: I offer it in evidence.

THE COURT: Any objection?

MR. TOCCI: Your Honor, I object to it on the ground of irrelevancy, because there has been no showing of any loss of income, and it is our position, as we indicated to you in the pre-trial brief, that unless there is a loss of income, there is no allowable damages in this type of a proceeding for fixed costs and overhead expenses and things of that nature.

MR. WILLIAMS: I don't think that that position is supported by authority. There is testimony here in the record that there was a substantial diminution of activity during this period of time because of the picketing, and that there was idling of the equipment, trucks, et cetera, and that slightly more than a third of the personnel came to work during that period of time, and I think that that is adequate justification for this loss of this on-going overhead.

THE COURT: Well, Mr. Tocci, your

received in evidence.

(Plaintiff's Exhibit 8 for identification, received in evidence.)

BY MR. WILLIAMS:

Q Mrs. D'Ambrosio, you were here during the testimony of Robert Jones?

A Yes.

Q And you heard the testimony concerning the bills that he submitted?

A Yes.

Q And the amounts of those bills?

A Yes.

Q And did you pay those bills?

A Yes.

Q So far as you can recall the full amount of them, is that correct?

A Yes.

MR. WILLIAMS: I have no further questions.

MR. TOCCI: May we have time to examine this exhibit, your Honor?

THE COURT: Sure.

CROSS-EXAMINATION

BY MR. TOCCI:

Q Mrs. D'Ambrosio, you heard Mr. DeLorenzo testify that

A They were drivers.
Q They were drivers?
A Yes.
Q And they drove equipment either owned or leased by D. E. Long?
A They were hired to drive. I don't know whether they were doing any actual driving or not.
Q You mean you paid them for nothing?
A No, they were on the payroll.
Q Well, I mean would you pay them if they weren't working during that week?
A I would assume not. I don't know. Their cards are not punched. They were paid this amount of money.
Q You were the Controller of the company, were you not?
A I was Controller, yes.
Q And these are payroll checks that you paid to them?
A They are payroll checks.
Q As Controller, do you have knowledge as to whether this was a gratuity to them, or whether you paid them for working?
A During the strike, I was -- I really don't know. I was working for Northeastern, and Colonel Grimshaw was involved in this.
Q You weren't working for D. E. Long?
A Yes, I was working for D. E. Long, but, during the

receiving payroll checks for hours worked?

THE COURT: Did you say April 3rd?

BY MR. TOCCI:

Q Yes, for the week ending April 3rd, you had six?

A Yes.

Q And you had one-third of your driver force working during that week?

A Right.

Q Did you take that into account in computing what you alleged to be loss of fixed expenses?

A No.

Q The fact that one-third of your working force was there?

A No.

Q Now, for the week ending April 10th, do you have a payroll for that one?

A Yes.

Q Can you tell me how many drivers it shows receiving pay during that week?

A There were no drivers working regular hours that week.

Q All right.

A There were three that came in on Saturday.

Q And that was the only drivers that worked that week?

A That is right.

Q And how many hours did they work on that Saturday, can

Q What do you mean by commissions?
A Mr. McKenna was receiving a commission at that time.
Q What did he receive a commission for?
A Gross activities.
Q What do you mean by gross activities?
A Mr. McKenna worked on a gross basis, rather than on a net basis.
Q Do you mean if whatever the gross was of D. E. Long, he received a commission as part of his remuneration?
A Right.
Q Now, since there was no -- if the trucks weren't working, and they weren't running, he wouldn't be receiving commission, would he, during that two-week period that the trucks weren't running?

MR. WILLIAMS: I submit, your Honor, that I think that that question is misleading. The commissions are based upon revenues, and not whether or not the trucks ran or not.

BY MR. TOCCI:
Q Well, the revenue generated by a truck would result in, what is his name, McKenna, receiving a commission on the revenue generated by that truck, isn't that correct?
A That is correct.
Q So if the truck wasn't running, it wasn't producing

revenue, and therefore he wasn't receiving a commission, isn't that correct?

A I would say you are correct.

Q Now, the item for insurance and safety I assume that that is all of the insurance bought by D. E. Long for that 11-month period?

A Right.

Q Does that include Workmen's Compensation insurance?

A I don't know. It probably does.

Q And it includes disability coverage?

A Yes.

Q And it includes --

A (Interrupting) No, not the disability. D. E. Long doesn't pay the disability.

Q They got that through the union pension?

A Yes.

Q Does it cover -- let's see what the other insurance is. Would that be your automobile insurance?

A Right.

Q And your truck insurances?

A Right.

Q Now, would this -- there were other people working during this two-week period, were there not, this week ending April 3rd, and the week ending April 11th?

A Only the people I told you about.

Q Yes, the office people were working.
A They were included here on the payroll, yes.
Q And they were working?
A Yes.
Q And the administrative help was working?
A Yes.
Q And Mr. Clark was working?
A Yes, he was.
Q Mr. Grimshaw was working?
A Yes.
Q And Mr. McKenna?
A Yes.
Q And you were working?
A Yes.
Q And this insurance and safety item that you have here, it produced insurance for those people that were working, did it not?
A Yes, but Mr. McKenna and myself, and Mr. Grimshaw, were not on D. E. Long's payroll.
Q You were not, but there were some people that were not on that -- were on it, and 11 people on the week ending the 3rd, and how many people on the week ending the 9th?
A Here we go again; four.
Q No, total payroll, and not just drivers?

A Total payroll, there were four people working, and there were three people came in on Saturday.

Q And no one else worked for D. E. Long during that week?

A Right.

Q So that those people working during that week, and also during the week ending April 11th, were covered by this insurance item that you showed here?

A Yes, it is an overhead item.

Q And it covered people who were working and people who weren't working?

A It was total workmen who came in, of course, right.

Q And the people who were working for D. E. Long during the period were performing their regular jobs, isn't that correct?

MR. WILLIAMS: Well now, I think that the witness has no knowledge of that.

BY MR. TOCCI:

Q If you have any knowledge?

A I don't understand it.

Q Well, let me ask you: The office help that was working during the week ending April 3rd and April 11th, they were performing the office work that they normally performed?

A Yes.

Q And the administrative people that were working during

that period, they were performing their usual administrative chores?

A Yes.

Q And Mr. DeLorenzo was an employee of D. E. Long, wasn't he?

A He was not on the payroll.

Q He was not?

A He was --

Q (Interrupting) He was not on the payroll of D. E. Long?

A He was paid by Northeastern.

MR. TOCCI: Well then, I move to strike Mr. DeLorenzo's testimony, your Honor, that he was an employee of D. E. Long, which he testified to.

THE COURT: I deny the motion on the grounds of laches.

MR. TOCCI: Laches?

THE COURT: I was going to ask that question of Mr. DeLorenzo, but nobody asked him.

MR. TOCCI: Yes, he testified he was a Sales manager.

THE COURT: But nobody asked him who paid him, and that is the way to find out who he works for.

MR. WILLIAMS: I submit that the man can have a title with one company, and be paid by

another person.

THE COURT: That is true.

MR. WILLIAMS: There is no basis for the motion that he just made to strike his testimony.

BY MR. TOCCI:

Q Now, Mrs. D'Ambrosio, under salaries, you have listed $21,928. That is over an 11-month period. Now, whose salaries would that be?

A We had a gentleman, James Palone, working for us who had a heart attack, and in December, anyway, his salary was continued for a number of -- a length of time.

Q Is that the $21,920?

A Part of it, yes.

Q And who else's salary was it?

A Only his.

Q He received $21,000 a year?

A He was getting twenty-five sixty-eight a month.

Q Was Mr. Palone working there in March of 1971, or was he still out on disability?

A He was out on disability.

Q He was out on disability. So that -- notwithstanding the strike, and the people not coming to work, you still would have been paying Mr. Palone his salary, even though?

A It is part of the overhead at that time.

Q I am not asking that question. I am saying that during that two-week period, the week ending April 3rd, and April 11th, that is what I am talking about, and even if the drivers had been -- your obligation to pay that was there, whether or not the drivers were working, or not, isn't that correct?

A Yes.

Q And you received no work out of Mr. Pallone?

A No.

Q In return for this sum?

A No.

Q And who is this office salary?

A Well, --

Q (Interrupting) That is $5,000.

A That is Fran Coviello and Gus Pallone.

Q I thought that you said Gus was out on disability?

A That was James Pallone.

Q Oh, James Pallone?

A Yes.

Q And the office salary would be for Gus Pallone, and for this Fran?

A Yes.

Q And did they work during the picketing?

A Yes, they did.

Q And then you received their services during the picketing?

A Yes.
Q And they did the regular work during the picketing?
A Yes.
Q Now, under miscellaneous office expenses, does that include telephone?
A No, telephone is separate.
Q What is the miscellaneous office expenses?
A Well, --
Q (Interrupting) You have two items: Office expenses and then miscellaneous office expenses, totalling $3,376?
A Well, other office supplies, and calendars, and normal office supply type of stuff.
Q And these are the things that were utilized even during the time that some of the drivers did not come to work?
A That is correct.
Q And communication, is that the telephone?
A That is the telephone.
Q That was utilized even when the drivers weren't coming to work.
A That is right.
Q Now, in addition, you have taxes and licenses. What taxes did D. E. Long -- well, what taxes are included?
A Registration, either income tax or any other tax. The

truck mileage tax. Anything that is pertinent to the trucking industry.

Q It would include the truck mileage tax, wouldn't it?

A Yes.

Q And that is paid on the basis of the number of miles that the truck travels?

A That is correct.

Q And if certain trucks weren't traveling during this period when the drivers weren't coming to work, then you weren't paying tax on the truck mileage, were you?

A If they weren't traveling, there was no tax paid.

Q And did you deduct that from your overhead?

A No, I did not.

Q Now, this equipment rental of $14,016: What equipment was being rented by D. E. Long?

A Oh, they rent trucks when they need them. They rent drinking fountains. A copying machine, I think, at the time.

Q Were trucks being rented during the period or week ending April 3rd, and the week ending April 11th or 10th?

A I don't recall. I would say no.

Q Pardon me?

A I would say no.

Q No trucks were being rented?

A I don't recall.

Q All right. So then there was no fixed expense of truck rentals during that two-week period?

MR. WILLIAMS: I submit that she just testified that she didn't recall whether they had been rented or not.

BY MR. TOCCI:

Q Can you testify that there was a truck rental expense during the two-week period when some of the drivers did not come to work?

A I don't recall; really, I don't.

Q In other words, you cannot testify that there was --

A (Interrupting) Or that there wasn't.

Q Or that there wasn't?

A Yes, that is true.

Q Mrs. D'Ambrosio, the office people that were in the office during the period that some of these drivers didn't come to work, what were they doing during those two weeks?

A During a strike, with the strike they were extremely busy. I don't recall offhand what they were doing, but they were very busy, I recall that.

Q So they were working, were they not?

A Yes, they were.

Q And the administrative people who came in to work during that period, what were they doing?

MR. TOCCI: (Interrupting) Is it possible -- do you want him to finish before I ask him a question? Or when we get to a particular area?

MR. WILLIAMS: May we go off the record?

THE COURT: Yes.

(Discussion off the record.)

THE COURT: Go ahead.

MR. WILLIAMS: During the period commencing March 25, 1971, I performed various legal services for Northeastern Industrial Park that were related to the picketing, which is the subject of this action. From what time records I maintained during the period, I am setting forth the following services, and the dates of their rendition, and the number of hours spent in these services. These services were largely secondary and supportive of the services rendered by Mr. Jones, to which he has testified already.

Commencing on March 25, which was the first day of the picketing, I was involved in the matter for a total period of four hours. This was again conferences and discussions and strategy planning with respect to the picketing.

On March 26th, the following day I was similarly engaged for a period of 4.7 hours.

On March 29th, I was engaged in general services relating to this,to the extent of 2.1 hours.

On March 30, again, I was engaged to the extent of 2.3 hours.

On March 31, I was similarly engaged to the extent of 3.2 hours.

I rendered no services until April -- well, in this connection, until April 5, on which day I logged a time of .4 hours for telephone conferences and discussions relating to the matters, and a 2.7 hour charge for a conference that took place on that day at the office of Robert Jones.

On April 6th, my records show the following time charges, all related to this matter, a .3 hour charge for conferring with Mr. Jones, and a 1.0 hour charge for a telephone conference with Mr. Jones, Mr. McKenna and Mr. Grimshaw. Then a general services charge of .5 hours.

On April 7, conferences relating to the same matter consumed 5.5 hours.

On April 8th, I assisted in trial preparation for the NLRB proceedings which occupied 1.2 hours of my time, and again a charge on the same day for similar services of .3 hours.

On April 9, I attended this court

along with Mr. Jones and other representatives of Northeastern, in the injunction proceeding, and my total time for that entire day in court was 5.9 hours.

No further charges are attributable to this matter as far as my time is concerned until July 23rd and July 24th, when I again participated in a supportive role with Mr. Jones at the NLRB hearings which occurred on that date, and the total time invested was 9.5 hours.

I have a total of 43.6 hours of time spent. Based upon my experience, and my general knowledge of prevailing charges it is my opinion that acting as I was at that time in a supportive role to Mr. Jones, a fair and reasonable charge for legal services, an hourly charge, would be $50.

Applying that to the 43.6 hours of my time, I arrive at a figure of $2,180.

That is charging the Northeastern Industrial Park for my time invested in this matter.

My billings to Northeastern Industrial Park were on a monthly basis and did not ordinarily break down and separate for various matters that I became involved in. That is it.

May I add one further statement: All of my billings have been paid to date, including the

amount that I have stated, the $2,180, which is attributable to my services in connection with this particular matter involving Local 294.

THE COURT: Is that your own handwritten statement?

MR. WILLIAMS: Yes, this is actually my secretary, your Honor, who compiled this and took this out of the time record book that I kept at that particular time. The lines that I have drawn through here are charges that I have stricken out as not properly and entirely attributable to this particular matter.

MR. TOCCI: May I cross-examine?

THE COURT: Yes.

CROSS-EXAMINATION

BY MR. TOCCI:

Q You said that you had a conference with Mr. Jones on April 5th of 2.7 hours?

A That is what I show, yes. It was a conference at his office.

Q At his office?

A Yes.

Q And were you there all of the time that Mr. McKenna and Mr. Grimshaw were there in Mr. Jones' office?

A I believe that Mr. McKenna and Mr. Grimshaw were

A Only to the extent that such services were incidental, because Rotterdam Ventures did experience some picketing, and were made a charging party in these proceedings.

Q But what I am asking is these hours that you have enumerated, have you taken from them, or have you included in there the hours that you rendered services to Rotterdam Ventures?

A Well, all of my billings at that time, whether the services benefitted Rotterdam Ventures or D. E. Long, or any other corporation in the complex, all of my billings went to Northeastern Industrial Park and that was the arrangement.

Q Let me ask you this: You had a proceeding in a State court for Rotterdam Ventures?

A That is correct. I think also that involved Northeastern Industrial Park, and no charge, incidentally, is being made or claimed for that.

Q That is what I wanted to know.

A Right.

Q In other words, the services that you rendered to Rotterdam Ventures in that State court proceedings?

A Right.

Q You are not claiming that as a part of the charge of Northeastern for this proceeding?

A I would say that would be so.
Q And have you practiced before the National Labor Relations Board?
A Many times.
Q And you, of course, have practiced in the United States District Court?
A Many times.
Q In 1971 and 1972, and even at the present time, you have been engaged in the active practice of law?
A Among other portions of the law.
Q All right. Are you or were you familiar in 1971 and 1972 with the prevailing and reasonable charges made of lawyers in the Albany area for services rendered in the practice of labor law, representing management?
A Yes.
Q And can you tell us what, to your knowledge, was the prevailing charges for lawyers practicing labor law in the Albany area, or representing management during that period?
A Are you speaking of hourly?
Q On an hourly basis, if you will.
A I would say in the area of $50 for trial work and $40 for office work.
Q Now, were you -- you had practiced before the National Labor Relations Board in your fair labor practice

that meeting in Chambers, you and Jerry and I walked down from the Courthouse, and went out the back door and it was a lower level, and we came out the back door and were standing on the sidewalk and talking for a minute, and Mr. Pozefsky, Harry Pozefsky, and I think Tim Lane, but I couldn't swear to him, and I remember Harry specifically, but at any rate one of the representatives of the Teamsters was with Harry, and I called out and was coming down the steps, and he called out and asked if he could talk to me for a minute and I said, "Sure." And he asked if it would be possible to put the pickets directly on the area surrounding the warehouses that R. & R. Handling was occupying, and he had agreed if we would permit him to come into the Park to picket that he would take the pickets off the gates which in effect would open up the Park to traffic.

Now, my conversation with him then went into a little discussion of the private property rights relating to Industrial Park, and I told him that I did not know, specifically, what the law was on the subject. And Harry quoted something that he was familiar with, a recent ruling that related to shopping centers and, again, I told him that I could not -- I was not familiar with the case that he was

talking about and I didn't want to respond since I was not familiar. But I said that what I would do was to refer the question to our legal Counsel, yourself, and you were standing right there, and this was a Friday, and that by Monday we would try and have an answer, we would try and determine what the position was, and get back to him and respond. In return for that, if I recall, he agreed, and this would be probably before lunch on Friday, and he agreed to remove the pickets for the rest of Friday, and not restore them until after I talked to him on Monday.

Q Now, at any time during this period do you, as Vice President of D. E. Long, recall being apprised or consulted by the union in any way, with respect to any dispute with D. E. Long?

A No. As a matter of fact, on the phone Monday --

Q (Interrupting) Now, what Monday would this have been?

A Well, the 25th would be Thursday. O.K. The following Monday, and the 26th is Friday, and the 27th is Saturday and the 28th is Sunday, and it would be the 29th of March. The following Monday the pickets appeared, and they were carrying different signs. Originally they related to R. & R. Handling, and on the following Monday the signs referred to D. E. Long, and indicated a dispute over the administrative position. And I have

forgotten teh exact words of the sign. But at any rate, when I came into the Park, in coming to my office, I saw the sign, and I went in, and I went back to the D. E. Long office, and I found Ward Clark, who was the operating supervisor of -- the acting manager or whatever you want to call him, of D. E. Long, and I asked him if he had any knowledge of the dispute between the Teamsters and D. E. Long, and if so, what was involved. Ward said he didn't know anything about any dispute, and he had not been apprised.

Now, Ward Clark reported directly to me, and one of my functions and responsibilities as Vice President of D. E. Long was to supervise directly the operation of the company so I would have been the one that they would have talked to, although they might have talked to Ward in lieu of myself.

Q And what was Ward Clark's position with D. E. Long at that particular time?

A Ward Clark was Acting Manager or Acting Supervisor, and I don't know that we specifically assigned him a specific title, but that was his function.

Q All right. Now, during this picketing, do you recall D. E. Long trucks moving in and out of the Park?

A Now, that would be a little difficult to do, because our drivers in D. E. Long were all members of the

local Teamsters and so as soon as the pickets appeared at the gate, why, it halted the D. E. Long operation.

Q Completely?

A Yes. We had some vehicles -- we had a couple of vehicles at the South Mall, and a little pick-up truck, and I think a couple of flatbeds, and possibly another tractor down there someplace. The other vehicles were inside the Park, and that was it.

Q Now, were you paying rental for some of these idle vehicles at the time?

A As I recall, we had rented someplace between one and three flatbeds, and there could have been a tractor involved. I don't recall that for sure. But flatbeds I am pretty sure of from an outfit on Central Avenue in Colonie. The Colonie Motors, I think it is. Of course, we paid by the day so the vehicles were stuck and I don't remember whether they were stuck downtown or at the Park, but that was it.

Q You were paying during that period?

A Yes, for the vehicle on a daily or per diem basis.

Q At that particular time, since you were Vice President of Northeastern and D. E. Long and other corporations, how were the payrolls of these corporations handled? Were they all handled through one of the corporations?

A Well, when we first bought out D. E. Long, which would

continued to run D. E. Long just as it had been run by Mr. Pallone?

A Essentially, yes, yes.

Q And all of the Chiefs of D. E. Long were members of Local 294, Teamsters, were they not?

A That is correct, yes.

Q And they continued to be members when your company took it over?

A Oh, yes, I know they were, because I signed checks paying their contributions to the union.

Q So are you saying that you signed the checks paying contributions to the union, and are you referring to their dues checkoff?

A No, wait a minute now. I am referring to their retirement fund contributions and things like that.

Q And health and welfare?

A Yes.

Q And you personally, and we are speaking, of course, about the period of March and April of 1971, and all of the questions that I refer to you --

A Yes.

Q -- and you personally would sign the checks, making the payments to the Health and Welfare and the Pension?

A I think at the time that we are talking about, I probably personally signed 99 percent of the checks

for all of the corporations.

Q But in any event, you recall D. E. Long making the payment to the union pension fund?

A Absolutely.

Q And the union welfare fund?

A Yes, right.

Q And you also recall that there was a Union Steward at D. E. Long in 1971?

A I am sure that there was. In fact, I think -- I had a, as I recall, Ward Clark at the time who held that position, and then I have a hunch that he was replaced because he went into a management position, and I honestly can't recall who the gentleman was that took his position.

Q Do you remember Mr. Baldwin sitting there?

A I can't say that I did.

Q Do you remember his being an employee?

A His face is familiar, but you know, you are talking five years ago.

Q I understand. In any event, the period that we are talking about there was a union steward?

A Yes, I am sure that there was.

Q And in addition, were you paying -- you were paying a certain rate, uniform rate to your drivers, were you not?

A Yes.
Q And you were paying the union rates?
A That is correct.
Q And were you also providing your drivers with certain holidays and vacation benefits?
A Whatever the union contract called for.
Q Whatever the union contract called for, that is what you were paying them?
A Yes.
Q And that is contract with 294 Teamsters?
A Correct.
Q And then --
A (Interrupting) May I interrupt?
Q No. I don't plan to be disrespectful, but I am going on to the next question.
A I wanted to add one point, but go ahead.
Q Now, were the office clericals, the people who were employed as office employees at D. E. Long, were they members of Local 294 Teamsters?
A Well, we really did not have an office staff.
Q You had a girl?
A We had a girl that came in at that time, and we had a girl that came in part-time, as I recall, about four hours a day, or something like that.
Q Right.

A And she did some of the billing, and she put together some of the payroll data, and things like that.

Q O.K.

A We did not have, per se, a full-time office employee.

Q Right. And what about Mr. Pallone? Didn't he do some clerical and office work?

A Jim Pallone?

Q Yes, or Gus. There was a Gus and a Jim?

A Well, Jim Pallone was the original owner of D. E. Long, and when we bought out the company we bought it with the understanding that Jimmy would come to us for a period of five years, and during that period he would manage the company. Well, after he had been with us, I would say, through the summer and fall, and perhaps into the early spring of the following year, Jimmy had a stroke in his office one morning, and he was laid up for a long, long period of time. Now, we took Ward Clark, who was Jimmy's right-hand man, and who was essentially doing all of the field operations and service, and we brought Ward into the office to do whatever had to be done there, but he was the working Supervisor.

Q O.K. Now, there was another Pallone that worked there?

A Gus Pallone, who was Jimmy's nephew.

Q And what did he do concerning the office or clerical

work?

A Well, Gus, let me see what Gus did to. I think that he was doing some selling. I think, as I recall, beyond sales contacts, because we were trying at that time, to expand the D. E. Long operation, and he probably did a little helping out in the office, but that really wasn't his function. He did not type or anything like that.

Q Yes. In addition to Gus, and this other girl, was there anyone else that worked in the office in a non-managerial capacity?

A No. No, actually you would really, if you are nailing it down to office staff, you have to talk about a part-time girl, and that is really all there was.

Q With regard to this part-time girl, and Gus, they were not covered by the union contract, were they?

A I would not think so, no.

Q You were not paying pension and welfare benefits on their behalf?

A I don't recall. I really don't. I know that at the point that I became more directly involved in the administrative functions of D. E. Long, one of the things that I sought was a written copy of the contract with the Teamsters, and after a lot of questioning back and forth we found there was no such thing as a

written contract, a written signed contract, which I had expected existed, but instead of that, I got a little blue booklet about three or four inches, and seven inches long, which had a lot of the rules of the game, if you will, in it. Beyond that, you know, it was something about that size, and I was thinking it was blue. Maybe it was white.

Q I show you this, and is this the book that you are referring to (offering)?

MR. WILLIAMS: I am going to object to this. We have been sitting here quietly listening to this, but it is really irrelevant to this issue, and the purpose of this questioning is, I assume, is to attempt to establish that some kind of a contract existed between D. E. Long and the union, and whether or not such a contract existed is entirely irrelevant here. It has no bearing on the issues of this action.

MR. TOCCI: We have already briefed you on that.

THE COURT: I think that his position is that there was a contract, and if it wasn't in the contract form, it was an implied contract and that D. E. Long followed it.

MR. WILLIAMS: Well, I think --

THE COURT: (Interrupting) And that that

would bar the lawsuit as far as D. E. Long is concerned because they haven't exhausted the grievance procedure in this booklet, and I think that Mr. Grimshaw has it in his hand.

MR. WILLIAMS: Our position is that if such a contract did exist, it would not bar that proceeding, and it is irrelevant to it.

THE COURT: I appreciate that, but I know his point that he is trying to establish. I think that it simply is: Was there any contract signed, Mr. Tocci?

MR. TOCCI: There was never a signed contract. We never said that there was.

THE COURT: That is important to me, because that has a bearing on the arrangement of the parties.

MR. TOCCI: But under the law, or portions of that, whether it is signed or not, if there was a contract between the parties in labor relations, that is sufficient, and --

THE COURT: (Interrupting) At least we have agreed that there was no signed contract between D. E. Long and Local 294.

MR. TOCCI: At that time there wasn't, and we never claimed there was.

BY MR. TOCCI:

Q Is this the booklet (indicating)?

A It looks similar, at least, and I don't know if it is or isn't.

Q But you did have a booklet that was given to you by either the Steward or someone from Local 294?

A I think I got it from Jimmy.

Q Jimmy who?

A Jimmy Pallone. It was somebody like this, and whether this is it or not, I don't know.

Q Now, and whatever you call this booklet, it was that booklet that you used to determine the amount that you should pay to the pension and welfare fund for your truck drivers?

A Well, not really.

Q How would you determine how much to pay?

A I am ashamed to say that what we did was to follow the procedure that D. E. Long had followed, and also called the Teamsters office to see if there had been any changes, and that was the way that we got our figures.

Q All right. Now, how would you --

A (Interrupting) As I recall, I think that there was a change of a dollar at that time.

Q And how would you determine what hourly rates you would

pay your drivers?

A I think that this same method was used.

Q Call Local 294 Teamsters?

A Yes.

Q And what would you call them for? Would you ask them what the union rate was?

A Initially, I was asking them for what I thought was a written copy, and I found out that it did not exist.

Q Who did you talk to when you called the Teamsters?

A I really don't know. Probably a girl in the office.

Q Did you ever talk to Mr. Lane about what rates should be paid?

A No, I am sure that I didn't.

Q Now, did you also pay a vacation to the men, paid vacations?

A I am sure that we did, yes.

Q And how did you determine what vacation benefits they should receive?

A Again, we continued the practice that existed when we took over the payroll.

Q And you paid the vacations as they are in the Teamsters book?

A I didn't say that.

Q How did you do it?

A Not as the Teamsters book. We followed the practice

that had been followed by the payroll system. Now, Ward Clark was very familiar with the procedures.

Q Yes?

A And I don't know that we ever went to the book and dug it out, because we had the information from other sources.

Q Right.

A And I assumed that it was creditable and valid.

Q You had a Union Steward on the job, you said, and do you recall that?

A I am sure that we did. As I said, I think that Ward Clark was the Union Steward prior to the time that Jimmy had the stroke.

Q He moved up?

A Yes.

Q And when he was the Union Steward, would he handle the grievances on behalf of the men?

A I never heard of one.

Q You never had one?

A I never had any that I knew of. Jimmy might have had one.

Q Now, to get back to my question: Were you paying pension and welfare benefits to Local 294 Pension and Welfare Fund on behalf of the girl who worked in the office, or Gus Pallone?

A No, I don't believe so.

Q Now, I show you these documents, Mr. --

MR. TOCCI: First, maybe I should have them marked.

THE COURT: You better have them marked.

THE CLERK: Defendant's Exhibit H, I, J and K, marked for identific ation.

(Documents marked Defendant's Exhibits H, I, J and K, respectively, for identification.)

BY MR. TOCCI:

Q Now, I show you these exhibits that have just been marked by the Clerk, and ask you if you can identify them and the signature on them (offering)?

A Yes. Yes, I see four documents that bear my signature and title, and various dates.

Q And that is your title, as in D.E.Long, is it not?

A That is correct.

Q Can you tell us and describe to us what these documents are?

A I believe that these are a copy of the report that was rendered, I think, monthly, along with the check covering the contributions, the total contributions for all of the employees listed on the report. I do not remember whether we did this every two weeks,

or every four weeks, but it was on a regular period of time.

Q Yes, and these, do they not, list the employees for that date and the hours they worked per week, and the amount of contributions due to the pension fund on their behalf?

A They would appear to, yes.

Q And these are all above your signature?

A That is correct.

Q And that is the contribution report to the Pension Fund of Local 294 Teamsters, is that correct?

A That is the way it says.

MR. TOCCI: I would like to offer these in evidence, your Honor (offering to Counsel).

MR. WILLIAMS: I object to the relevancy, your Honor. They are immaterial, and therefore incompetent.

THE COURT: Well, I will ask again: What is the purpose? Does this go to the same thing, trying to establish that there was a contract or a collective bargaining agreement?

MR. TOCCI: Yes, between the parties.

THE COURT: By the conduct of this --

MR. TOCCI: (Interrupting) By the conduct of the parties, and their adherence to the

terms of the contract.

THE COURT: I will receive them. You should read the dates.

MR. TOCCI: I will, your Honor.

I will have him read the dates, and they are marked in evidence.

(Defendant's Exhibits H, I, J and K, for identification, received in evidence.)

BY MR. TOCCI:

Q Now, I show you Defendant's Exhibit H and I ask you to read the date of the report.

A The report is for the month of January, and from this it indicates that it was signed on the 15th of March of 1971.

Q But it was a report for the month of January of 1971?

A The report indicates it was for the month of January, 1971.

Q Now, I show you Defendant's Exhibit I and I ask you for what month does it indicate that report is made?

A This report is signed on the same date, the 15th of March of 1971, and it is for the month of February of 1971.

Q And I show you Defendant's Exhibit J, and I ask you to tell me what date is on there, and what month the report is for?

A The report is signed on the 14th of April, 1971, and the report covers the month of March, 1971.

Q And I show you Defendant's Exhibit K, and I ask you to relate the same information.

A The report is signed on the 13th of the 5th month, and represents the month of April of 1971.

The first report is not the report for the month of January, but is in addition to it, and indicates there was a name left off the original report.

MR. TOCCI: Maybe I have that report. May I have that marked, please?

THE CLERK: Defendant's Exhibit L, marked for identification.

(Document marked Defendant's Exhibit L for identification.)

BY MR. TOCCI:

Q I show you Defendant's Exhibit L, and I ask you if that is a report for January of 1971 to the Pension Fund, Local 294 (offering)?

A It would appear to be. It does not bear my signature. It is signed on the 11th of February of 1971.

Q Can you read the signature?

A Yes, this is the little part-time bookkeeper that we had.

Q What is that?

A I think that the name is Carello, or Coreallo, and it is for the month of January.

Q Do you recognize your signature?

A Yes, that is familiar.

MR. TOCCI: I offer this in evidence, your Honor (offering to Counsel).

MR. WILLIAMS: Same objection as irrelevant and immaterial.

THE COURT:I will receive it.

THE CLERK: Defendant's Exhibit L, received in evidence.

(Defendant's Exhibit L for identification, received in evidence.)

BY MR. TOCCI:

Q Now, you indicated that there were some picketing at a reserve gate, Gate 9, on or about March 25th of 1971?

A Well, I wouldn't say Gate 9. I described it --

Q (Interrupting) Well, a separate gate?

A Yes, which I had set up for that purpose.

Q And while the picketing was there, the D.E. Long people were coming to work, were they not; the drivers?

A I would assume that they were already at work. I think that they used to come in to work at 6 o'clock in the morning and this whole situation began around 8

or 8:30, perhaps.

Q When did the D. E. Long people stop coming to work, if you do know?

A Well --

Q (Interrupting) Was it when the D. E. Long signs went up?

A It would be related to the time when the pickets began to appear at the main gate of the Park, but I cannot testify specifically to the day or dates that they failed to come to work.

Q Now, you said at some time there was a change in the picket line, in the picket sign, I mean, or the language?

A On Monday I think that we already established that as the 29th.

Q And do you recall that the change in the picket sign language was changed to read "Office and clerical workers of D. E. Long do not receive the benefits and protection of the Teamsters' Local 294 contract"?

A That sounds familiar.

Q And do you recall that?

A I said it sounds familiar. I wouldn't swear to it, but it sounds right.

MR. TOCCI: Will Counsel stipulate that that was the sign language?

MR. WILLIAMS: I can't stipulate to that. I think that the witness has testified, and that will have to stand by itself.

MR.TOCCI: I just wondered if you would stipulate.

BY MR. TOCCI:

Q Do you recall it said something about clerical workers at D. E. Long?

A Yes, yes.

Q All right. Now, during the time that the picketing, or the D. E. Long signs were going on, some of your drivers came to work, didn't they, either at the Park or any other places?

A I would assume in the early part of the picketing that this is probably true.

Q And while the picketing was going on, weren't you also running some trucks out of Rotterdam Industrial Park?

A Well, we had D. E. Long vehicles located at Northeastern Industrial Park -- we had one or two or three, and maybe four at the South Mall, and some of which I believe were stored in a garage downtown. We had some vehicles that I think were in Rotterdam, and the main body of vehicles in the Northeastern Industrial Park at Guilderland Center.

Q And that was, they were at these locations during the time that this picketing went on?
A This would be normal to their operations.
Q And that was your normal operation?
A Yes.
Q And while this picketing was going on, the trucks that you had at the Rotterdam Park, they were running, weren't they? They were being utilized?
A I don't think so. I think that we had to cease the whole operation, as I recall it.
Q Were the trucks at the South Mall being utilized?
A To the best of my recollection, I think that we stopped using them, as well. I think that they suffered some damage, and we stopped using them.
Q How about the trucks at the -- what was the other place?
A Well, some of the vehicles that were in the South Mall were garaged down in Albany.
Q Yes, a garage?
A But we are talking about the same vehicles, I think.
Q Now, do you recall being in this courtroom on April 9th of 1971?
A Good Friday, 1971.
Q And do you recall that?
A I remember the Judge very well, yes.
Q And do you recall your getting up on that morning?

A I recall my getting up on that morning?
Q Yes.
A I don't like to recall getting up on any morning.
Q Do you happen to recall what time you might have gotten up that morning?
A My only recollection of that is that we had a very early meeting. I think that we had a meeting -- I think that we had a meeting at the company and it could have been 7 o'clock, or 8 o'clock, prior to coming to the court.
Q And you were in this room?
A Yes, sir.
Q And how long -- I will withdraw that, your Honor. During this time that the picketing was going on, did you have your office clericals coming to work?
A Well --
Q (Interrupting) When I say office clericals, this Fran, that we mentioned?
A Well, first of all, let's establish the fact that Fran was a part-time employee who came to work on call for approximately a half a day's work each day.
Q She was coming to work during the time of this picketing?
A I don't recall. I really don't.

Q Was Mr. Ward coming to work?

A Mr. who?

Q No, Ward Clark.

A Yes, I am sure that he must have been.

Q And was Gus Pallone coming to work during the picketing?

A I am sure that he must have been. I can't swear to it, but I would assume so.

Q And your other administrative help with D. E. Long, were they coming to work?

A Mr. Attorney, I have just told you that there weren't anybody else, three times.

Q And did you have mechanics for D. E. Long?

A Yes, but wait a minute: I think that we did have on the staff one driver-mechanic. If I am not mistaken. I could be wrong on that, but of course, these people didn't come to work.

Q He didn't come to work?

A No.

MR. TOCCI: I have no further questions of this witness.

MR. WILLIAMS: One question.

REDIRECT EXAMINATION

BY MR. WILLIAMS:

Q You testified about an early morning meeting when you got up on April 9th, 1971, which was the date of the

court hearing in the injunction proceeding in this court, and do you recall that?

A Yes.

Q Was that with Mr. Jones?

A As I recall, we met in Mr. Jones' office before we came to this court.

MR. WILLIAMS: Thank you.

THE COURT: Thank you.

(Whereupon the witness was excused.)

MR. WILLIAMS: I have one more witness who I think will be quite brief, and I would like to proceed, but I would like a couple of moments to go over this.

THE COURT: Yes.

(After a short recess, the proceedings were resumed.)

THE COURT: Are you ready?

MR. WILLIAMS: Yes.

I now call Mr. Ward Clark to the stand.

WARD CLARK, called as a witness, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. WILLIAMS:

Q Mr. Clark, what is your present employment?

A I am self-employed.

Q And in what capacity?

A I own a rigging firm.

Q All right. Now, in March of 1971 were you employed by D. E. Long?

A Yes.

Q Inc.?

A Yes.

Q In what capacity, and what was your position with them at that time?

A Well, I was Manager.

Q All right. Now, do you recall the picketing that occurred around Northeastern Industrial Park commencing March 25, 1971?

A I wouldn't know that that was exactly the date. Only by you telling me, but I do recall the picketing.

Q Do you recall the picketing?

A Yes.

Q And do you recall approximately how long that picketing lasted?

A I would say two weeks.

Q All right. Were you a member of Local 294 at that time?

A No.

Q Had you been prior to that?
A Yes.
Q And had your membership terminated because of a change in your rank, or because of the assumption of a management position, is that it?
A Yes.
Q And during the course of that picketing, when you were Manager of D. E. Long, do you recall specifically a telephone conversation from Nicholas Robelotto?
A Yes.
Q What was the substance of that conversation?
A As I remember, it was a long time ago, but --

MR. TOCCI: I object to this, unless there is some foundation laid, you know, for who was on the other end of the line, or knowledge of the voice.

THE COURT: Ask him that.

BY MR. WILLIAMS:

Q Did you know Nicholas Robelotto?
A Yes.
Q And were you acquainted with his voice?
A I could tell it pretty much, but he told me who it was.
Q He told you?
A Yes.
Q And that was a telephone conversation?
A Yes.

Q And this took place sometime during the period of the picketing, is that correct?
A Yes.
Q And what was the substance of that conversation?
A I think he wanted to talk to Jerry McKenna and that was the reason he called, and at the termination of the conversation, I told him that he couldn't contact Mr. McKenna because he wasn't there. I asked him if there was any possibility that D. E. Long trucks would be going, or we would be able to continue our work, hauling stuff to the Mall, and he said, no, that D. E. Long trucks weren't going to move until some agreement was made between the Teamsters and the Park.
Q And how --
A (Interrupting) And the Park or Jerry McKenna, who was the Manager or President.
Q Were you aware at the time that the Teamsters had a dispute with R. & R. Handling?
A Yes.
Q And were you familiar with R. & R. Handling?
A Yes.
Q Now, either prior to this picketing or during the picketing -- withdraw that. Do you recall when the signs of the picketing were changed to read to make reference to D. E. Long, instead of R. & R. Handling?

A Well, the lines for a few days were for R. & R. Handling and I think it was about two or three days later they changed them, and they put the D. E. Long on the signs.

Q Now, at that time, or just prior to that time, had you and in your capacity as Manager of D. E. Long, had any contact from the union about any dispute with D. E. Long

A No.

Q Now, did the picketing that occurred against D. E. Long at the time, result in idling of their equipment?

A Yes.

Q Was there a complete shutdown of their operations?

A Eventually it came to that.

Q Well, what do you mean by eventually?

A We had a few trucks that could be used without crossing the picket line, but then they kept establishing more picket lines down at the South Mall and Market Square Garage, and Rotterdam Industrial Park, and finally they put us completely down.

Q Did the D. E. Long equipment that happened to be at the Park at the time that the picketing commenced against D. E. Long, did that remain at the Park?

A Yes.

Q That was unable to move, is that correct?

A That's right.

MR. WILLIAMS: I have no further questions.

CROSS-EXAMINATION

BY MR. TOCCI:

Q So, you say that you were the Manager of D. E. Long at that time in 1971?

A Yes, that is right.

Q And prior to your being Manager, had you been the Union Steward for D. E. Long?

A Yes.

Q And was that when you were a Union Steward under the Local 294 contract?

A Yes.

Q Please speak up.

A Yes.

Q And when you ceased being Steward, who took your place?

A Joe Baldwin.

Q Now, when did you become a management employee, do you recall?

A I don't recall. I was a dispatcher, and I don't even recall -- I don't recall when I was legally established with that title.

Q But it was sometime prior to the time that this picketing went on?

A Well, I am not positive of it, but I believe it was.

Q All right. Now, as Manager of D. E. Long, were you aware that they were working there under a union contract,

were you not?

A Under a union agreement, yes.

Q Pardon me?

A Under an agreement with the union, yes.

Q And that agreement was with Local 294 Teamsters?

A Yes.

Q And that agreement was in effect when you were Manager in March and April of 1971?

A Yes.

Q And did you handle grievances with the Steward under that agreement?

A It never came to the point where there was a grievance so I never handled it.

MR. WILLIAMS: Your Honor, I am going to repeat my objection to this line of testimony on the grounds that it is irrelevant, and I move to strike it out. This is testimony pertaining to an alleged agreement.

THE COURT: No, overruled. I am sure that we are clear that there wasn't any formal agreement, Mr. Tocci.

MR. TOCCI: Yes, there was a formal agreement, but it wasn't signed.

THE COURT: That is what I mean. That makes it formal when it is signed. There was no

actual agreement signed.

MR. TOCCI: There was no signed agreement, let me put it that way.

BY MR. TOCCI:

Q Now, Mr. Clark, when you said that when the pickets were outside the Park and they had the R. & R. signs, that the D. E. Long drivers were still coming to work?

A All of the trucks except R. & R. Handling were going through the gate.

Q That is when the picketing was outside with R. & R. signs?

A Yes.

Q Then, when the signs were changed to a legend that had D. E. Long on it, was it at that time that some of the D. E. Long drivers did not come in?

A The only ones that came in were the ones that got there before the pickets arrived.

Q Right. But that was once the D. E. Long signs went up?

A Right.

Q Now, were there D. E. Long -- we have established, I think, pretty well that the D. E. Long signs went up on the 29th of March. Now, on the 29th of March, were there trucks of D. E. Long in other establishments at other places other than the Northeastern Park?

A Yes, there always were.

Q Where were they?
A We had a pick-up truck down at the Mall, and it was the South Mall, and we stored, I think, one tractor, one or two tractors at Market Square Garage.
Q And did you have some trucks at the Rotterdam Park?
A Not on that Monday.
Q Not on Monday?
A We had some in the building. It was a Brockway over there. We had it in the building and it had been there some time.
Q Now, these trucks of D. E. Long that were located other than at Northeastern Park, were they operating?
A Yes.
Q Even though the picketing was going on at the Park?
A Yes, they were going at the Mall.
Q And they were still operated while D. E. Long was picketed?
A Not out of the Park.
Q But operating in other locations?
A Yes.
Q And how about the truck at the Rotterdam Mall?
A No.
Q That was not?
A No.
Q Did the mechanic go to work while the picket signs

were up for D. E. Long?

A I don't know if he crossed the line or not. I know a few mornings he came in before the pickets were there.

Q In other words, he got there before the pickets were there and went in?

A Yes.

MR. TOCCI: I have no further questions.

MR. WILLIAMS: Nothing.

THE COURT: All right, thank you, Mr. Clark.

(Whereupon the witness was excused.)

MR. WILLIAMS: The Plaintiff, your Honor, rests.

THE COURT: The Plaintiff has rested.

MR. TOCCI: May I have just a moment.

At this time, I would like to make a part of the record the testimony of Mrs. Janet D'Ambrosio, that was taken at the deposition before trial and namely, pages 40 through 49 of that testimony.

THE COURT: When was it taken?

MR. TOCCI: It was taken October 7th, 1975.

THE COURT: When did you say?

MR. TOCCI: 1975.

THE COURT: You offer this as part of

Q What position was that?
A Business Agent.
Q Now, do you recall that certain pickets were picketing at Northeastern Industrial Park in March and April of 1971 carrying signs making reference to D. E. Long?
A Yes, I do.
Q And do you recall that those signs had the legend, "Office and clerical workers of D. E. Long do not receive the benefits and protection of a Teamsters Local 294 contract"?
A Yes.
Q Is that the language on those signs?
A That was the language.
Q Were you the Business Agent that represented the people at D. E. Long?
A No.
Q Who was?
A Timothy Lane.
Q And is Timothy Lane now deceased?
A He is.
Q And how long has he been deceased?
A November, 1972 -- no, December 3rd, 1972.
Q And was he the Business Agent in charge of the contract insofar as D. E. Long was concerned?
A He was.

MR. TOCCI: I have no further questions.

MR. WILLIAMS: I have no questions.

THE COURT: Thank you.

(Whereupon the witness was excused.)

MR. TOCCI: I call Mr. Baldwin.

JOSEPH BALDWIN, called as a witness, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. TOCCI:

Q Mr. Baldwin, are you presently employed by D. E. Long?

A Yes, I am.

Q And in what capacity?

A Actually a Teamsters Foreman.

Q And in March and April of 1971, were you the Union Steward at the D. E. Long?

A Yes, I was.

Q And for what union were you the steward?

A 294.

Q And as steward, and in your capacity as steward, did you represent the drivers at D. E. Long?

A Yes, I have.

Q And were all of those drivers members of Local 294 at that time?

A They were or were getting into the union.
Q And did you, as steward, present the grievances or any grievances that they might have to management?
A Yes, I did.
Q And how would you deal with this management when you had to present a grievance?
A Through Ward Clark.
Q And your initial -- we are referring to,now, this time in March, or April of 1971, and when a member or a driver came to you with a grievance, what would be your first step?
A Well, he would have to make out a grievance, and then I would take this to Ward Clark, and if we couldn't settle it with him, I would take it to Timothy Lane.
Q You say that the employee would have to make out a grievance?
A Yes.
Q And what do you mean by that? Did he make out a slip?
A Well, you have a copy that you make three copies of it.
Q Yes?
A And I would, in turn, give this to Ward Clark, and if it couldn't be settled right there, then I would hand it to Timothy Lane for a grievance procedure.
Q And then the employee would fill out a grievance

form?

A Right.

Q And you would give a copy of it to Mr. Clark?

A Right.

Q And you would discuss it with Mr. Clark?

A Right.

Q And if you couldn't resolve it would you give it to Mr. Lane?

A Right.

Q And he was the 294 Business Agent?

A He was our B. A. at the time.

Q And then, would Mr. Lane sometimes come to D. E. Long?

A Yes, he would.

Q And for what purpose would he come?

A To see if he could settle it with Ward, out of grievance, and if not, then they would take it to grievance.

Q So in other words, after you were unsuccessful in resolving the grievance, then Mr. Lane would come and try with Mr. Clark?

A He would take over from there.

Q And if you could not resolve it yourself, or Mr. Lane could not resolve the grievance, what was the next step that was taken by the union and/or the company in regard to the grievance?

A Well, the union would notify the man the day the

grievance was coming up for a meeting, and they would generally have --

MR. WILLIAMS: (Interrupting) I am going to object to this line of testimony on the ground that it is irrelevant and incompetent. I would like to know the purpose and objectives of this line of testimony. He simply is describing the grievance procedure that took place at the time. How does it relate to the issues in this lawsuit?

MR. TOCCI: It is the same thing.

THE COURT: What relation does it have?

MR. TOCCI: It is the same point, your Honor, that it was part of their agreement, and the next step, of course, I am going to introduce the agreement and we will probably tie this in.

THE COURT: I thought that somebody told you that they didn't have any or many grievances? Did they have any?

THE WITNESS: When I was Shop Steward, they did.

THE COURT: What year were those?

THE WITNESS: Then it was the latter part of 1970 and 1971.

THE COURT: And that was March and April of 1971?

THE WITNESS: March and April -- not at that particular time, no.

THE COURT: I will allow it. I don't know.

MR. TOCCI: I would like to have this marked.

THE CLERK: Defendant's Exhibit M, marked for identification.

(Document marked Defendant's Exhibit M for identification.)

BY MR. TOCCI:

Q I show you Defendant's Exhibit M, and ask you if you can identify that (offering)?

A This is a book like I had given to me by Timothy Lane, the Shop Steward.

Q And was that the book that you utilized as Steward?

A Right.

Q And did the company have a copy of that book, to your knowledge?

A As far as I know, they should have had one.

Q And when you were speaking of the grievance procedure that you just mentioned, is that grievance procedure set forth in that book?

A Right, that is what I found.

Q And when you had discussions about grievances with Mr.

Ward, was it this book that you would be discussing if it came under the contract?

A Yes, it would.

Q And did you ever use this book in your discussions with Mr. Ward?

A Three or four different times.

Q And the rates that were paid the drivers at D. E. Long, were they the rates set forth in this book?

A Yes, they were.

Q And the vacation benefits that were paid, were they the benefits in this book?

A Yes, sir.

Q And the holidays?

A Yes, sir.

Q And also any overtime provisions or anything of that nature, were they all set forth in this book?

A Yes, sir.

Q And were you also receiving pension and welfare benefits while at D. E. Long?

A As far as I know, they were paying it at the time.

Q Right. And if you ever had any grievances with regard to any of these things, and vacations, and holidays, and overtime, and wage rates, et cetera, did you utilize this book in discussing it with the company?

A Yes, I have.